

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 19 OF 2019

1. Dada S/o Abdul Patel,
Age: 59 years, Occup. Agril.,
2. Rustum S/o Abdul Patel,
Age: 65 years, Occu. Agril.,
3. Wasim S/o Dada Patel,
Age: 25 years, occu: Education,
4. Ismail S/o Rustum Patel,
Age: 38 years, Occu. Agril.,
5. Usman S/o Ahmed Pathan,
Age: 60 years, Occu: Agril.,

All R/o Sakur, Tq. Sangmaner,
Dist. Ahmednagar.

...APPELLANTS

VERSUS

1. The State of Maharashtra
2. Subhash Bhimaji Sonawane,
Age: 47 years Occup. Agril.,
R/o : Sakur, Tq. Sangamner,
District Ahmednagar.

...RESPONDENTS

...
Mr. S.T. Shelke, Advocate for appellants
Mr. K.D. Munde, APP for respondent No. 1
Mr. Rahul Gearule Advocate holding for
Mr. C.R. Thorat, Advocate for respondent No. 2
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CORAM : K.K. SONAWANE, J.

RESERVED ON : 12th MARCH, 2019.

PRONOUNCED ON : 19th MARCH, 2019.

JUDGMENT :-

1. Heard. **Admit.** The present appeal is taken up for final hearing on merit with the consent of both sides.

2. This appeal is directed against the impugned order dated 05-01-2019 passed by learned Additional Sessions Judge, Sangamner, in Criminal Misc. Application (Bail) No. 245 of 2018 rebuffing the relief of pre-arrest bail of the appellants in Crime No. I-195 of 2018 registered at Ghargaon Police Station Taluka Sangamner, District Ahmednagar under Sections 143, 147, 323, 504 and 506 of the Indian Penal Code (IPC) and under section 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "Act of 1989" for the sake or brevity). The appellants preferred present appeal by invoking remedy under section 14-A(2) of the Act of 1989.

3. The prosecution case in nutshell is that, the first informant - Subhash Bhimaji Sonawane, resident of Sakur, Ta. Sangamner District Ahmednagar, on 26-12-2018 visited to the Police of Ghargaon Police Station, Taluka Sangamner, District Ahmednagar and filed the report alleging that he is handicapped person belonging from *Hindu Mahar* Community. On 24-12-2018 at about 2.00 p.m. the appellants, namely, Dada Abdul Patel, Rustum Abdul Patel, Wasim Dada Patel, Ismail Rustum Patel and Usman Ahmed Patel, all resident of village Sakur, were seen

unloading the raw material of brick kiln in his field. Therefore, first informant rushed to the field and opposed the appellants for dumping the raw material of the brick kiln in his field. But, the appellants roughed up the first informant Subhash, his wife and son Ganesh. The appellants hurled castiest abuses to them on their caste. They had also given threats of life to the first informant and also attempted to kill him by driving the tractor on his person. Thereafter, first informant rushed to the Police Station and filed report.

4. Pursuant to the FIR, Police of Ghargaon Police Station registered the Crime bearing No. I-195 of 2018 for the offence punishable under Sections 143, 147, 323, 504 and 506 of the Indian Penal Code (IPC) and also under section 3(1) (r) (s) of the Act of 1989 and set the penal law in motion. The Investigating Officer (IO) visited the spot and drawn *panchnama* of scene of occurrence. He recorded statements of witnesses acquainted with facts of the case. The appellants apprehending their arrest at the hands of Police knocked the door of Court of learned Additional Sessions Judge, Sangamner and filed the application for their pre-arrest bail under section 438 of the Cr.P.C. vide Criminal Misc. Application (Bail) No. 245 of 2018. But, the learned Additional Sessions Judge did not favour the appellants-applicants and rejected the application. The impugned order of the learned Additional Sessions Judge, Sangamner is challenged

in this appeal.

5. Learned counsel for the appellants vehemently submitted that the appellants are innocent of the charges pitted against them. They have not committed any crime. They are falsely implicated in this case on account of civil litigation of agricultural land in between the appellants and father of the first informant sub-judice before the Court of Civil Judge, Senior Division Sangamner. The learned trial Court did not consider the circumstances on record in its proper perspective and committed error in rejecting the application. According to learned counsel, ingredients of provisions of Act of 1989 are not attracted against the appellants in this case. The alleged injuries caused to the first informant and his family members were of simple in nature. Therefore, it would not justifiable to curtail valuable liberty of the appellants for the sake of investigation in this crime. Hence, he urged that the application for pre-arrest bail filed under section 438 of the Cr.P.C. be allowed in favour of appellants.

6. Learned APP for respondent No.1 and learned counsel for respondent No. 2 raised objection and submit that first informant and his family members are the owners and in possession of the agricultural land Gut No.1445 of village Sakur, Tahsil Sangamner. The present appellants have no concerned at all with said land. They used to do the money lending business and they are habituated to garb the immovable properties of the poor and

needy person from the locality. The appellants got registered the sale-deed of the land of the first informant from his father by committing fraud. The dispute about the same is subjudice before the Civil Court at Sangamner. On the day of incident, the appellants attempted to store the raw material of the brick kiln on the agricultural land of the first informant and thereafter the alleged incident of assault and castiest abuses occurred with the first informant and his family members. According to learned APP and learned counsel for respondent No. 2, learned trial Court has correctly appreciated the factual aspect of the matter on record and rejected the application. The learned counsel for respondent No.2 filed affidavit in reply on record. Learned APP produced relevant documents and investigation papers for perusal.

7. It is to be noted that this Court in the decision of Criminal Appeal No. 787 of 2018 (***Kiran Madhukar Ingle Versus State of Maharashtra and another***), elaborately dealt with the issue of applicability of Section 18 of the Act of 1989 to entertain the application for pre-arrest bail under Section 438 of the Cr.P.C. and made observations in paragraph Nos. 13 and 15 as under :-

13. It is explicitly made clear that the Court of Sessions or High Court can entertain the application for pre-arrest bail to ascertain its maintainability. The law does not permit to reject the application for anticipatory bail merely because the case has been registered under section 3 of the Act of 1989. But, it is incumbent on the part of the Court to examine

as to whether the applicant at all is a fit person to be treated as accused of the crime registered under the Act of 1989. Section 18 of the Act of 1989 does not bar judicial scrutiny of the accusation made in the complaint. When the Court is held competent to enter into scrutiny of the allegations to determine whether the person can be treated as accused of commission of offence under the Act of 1989, then question would arise as to what extent the Court would be justified to examine material to determine the *prima facie* case against him.

14. xx xx xx xx xx xx xx

15. The exposition of law as referred above unequivocally pointer to the inference that the application for anticipatory bail can be entertained only on the ground of inapplicability of the provisions of Act of 1989 and it would be ascertainable only on perusal of recitals of the FIR or complaint and not beyond that, because once it is gathered from the FIR that the applicant is accused of committing the offence prescribed under section 3 of the Act of 1989, a bar under section 18 of the Act of 1989 would instantly operate against him. Therefore, the Courts are not permitted to enter into roving enquiry in regard to sustainability of accusation nurtured on behalf of complainant. Moreover, further scrutiny by summoning the case diary or other material to test veracity of the allegations made in the FIR also not permissible under the law.

8. In the instant appeal, the prosecution applied the provisions of section 3(1)(r)(s) of the Act of 1989 against the present appellants, which reads as under :

“3. Punishments for offences of atrocities :-

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe :-

(a) xxxxxxxx to

(q) xxxxxxxx

(r) Intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view ;

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;

Explanation : For the purposes of this clause, the expression "object" means and includes statue, photograph and portrait."

9. After perusal of the FIR lodged against the present appellant, *prima facie* it reveals that the ingredients of aforesaid penal provisions do not match with factual score of the present case. The basic ingredients of section 3(1)(r)(s) are that there must be "intentional insults" or "intimidation" with "intent" to humiliate a member of Scheduled Castes and Scheduled Tribes in any place within "public view". It is abundantly clear that *mensrea* is the decisive factor in the offence under Act of 1989. There must be "intentional insults" or "intimidation" with "intent" to humiliate member of Scheduled Caste and Scheduled Tribes in any place within "public view". In the case of ***Shantabai Vs. State of Maharashtra*** reported in ***1982 Cr.L.J. 872***, it has been held that merely calling a person by his caste name though may amount to insult or abuse to him, it cannot be said to be with intent to humiliate such person.

10. In the matter-in-hand, it has been alleged that the appellants hurled castiest abuses as "महारडे" "महारगांडे" during the altercation on account of dumping the raw material of brick klin on the agricultural land of the first informant. If words "महारडे" "महारगांडे" are taken out from the complaint for

moment then other utterances that, “‘तुझे इथे काही नाही.’”
“‘तुझी इथे शेती नाही असे म्हणून तिस धक्का बुक्की केली.’”,
perceived from the FIR though indicate “threat” or “intimidation”
but does not pointer to the inference that there was any intent or
mens rea to humiliate the complainant and his wife on their caste
within public view. The allegations in the FIR in regard to assault
and intimidation taking name of caste of the complainant would
be at the most fall under the provisions of Indian Penal Code
under Sections 323, 504 and 506 of the IPC. However, the
appellants are already arraigned for the offence under Sections
147, 323, 504 and 506 read with Section 149 of the IPC.

11. In view of aforesaid discussion, I am of the opinion that in
spite of bar under section 18 of the Act of 1989, for invocation of
powers under section 438 of the Cr.P.C., it is still open to this
Court to find out by looking to the FIR of the case itself as to
whether *prima facie* case is made for the offence under the Act
of 1989 against appellants. The circumstances on record
adumbrates that the incriminating factor to show the intentional
insult or intimidation with intent to humiliate the complainant and
his wife within public view on the part of appellants are lacking
in this case. There is no impediment to arrive at the conclusion
that there are no material *prima facie* on record for inference that
appellants have committed offence under section 3(1)(r)(s) of
the Act 1989. As such, there is no statutory bar for this Court to

consider the application of the appellants filed under section 438 of the Cr.P.C.

12. As regards to the merits of the application for bail, I find that there is no propriety to curtail valuable liberty of the appellants for the sake of investigation of present crime. There is no recovery from the appellants. The injuries sustained to the first informant and his wife all were simple in nature. There is no possibility of absconding the appellants, as they are permanent resident of village Sakur, Tq. Sangamner. The apprehension expressed by the I.O. in his report about tampering of evidence of prosecution, would be overcome by imposing certain condition on the appellant. Therefore, it would be unjust and improper to refuse the relief of pre-arrest bail in favour of appellants-accused in the present crime. In such circumstances, appeal deserves to be allowed.

13. In sequel, the appeal stands allowed. The impugned order 05-01-2019 passed by learned Additional Sessions Judge, Sangamner, in Criminal Misc. Application (Bail) No. 245 of 2018 is hereby quashed and set-aside. The application of the appellants-applicant filed under Section 438 of the Cr.P.C. for their pre-arrest bail before the learned trial Court stands allowed. The appellants, namely, (1) Dada S/o Abdul Patel, (2) Rustum S/o Abdul Patel, (3) Wasim S/o Dada Patel, (4) Ismail S/o

Rustum Patel and (5) Usman S/o Ahmed Pathan be released on bail, in the event of their arrest, in connection with Crime No. I-195 of 2018 registered at Ghargaon Police Station, Taluka Sangamner, District Ahmednagar, under Sections 143, 147, 323, 504 and 506 of the Indian Penal Code and also under Section 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on furnishing PR bond of Rs.15,000/- (Rupees Fifteen Thousand) with one solvent surety of like amount each. It is stipulated that appellants-applicants shall not indulge, directly or indirectly, in any kind of activities of tampering with the evidence of prosecution witness. The appellants - applicants shall attend the Ghargaon Police Station, Ta. Sangamner, District Ahmednagar on every Sunday in between 11.00 a.m. to 3.00 p.m. till filing of the charge-sheet and shall co-operate with the Investigating Officer for the sake of investigation into the crime. Inform the concerned Investigating Officer accordingly.

14. The present Criminal Appeal stands disposed of in above terms. No order as to costs.

[K. K. SONAWANE]
JUDGE