

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

CRIMINAL APPEAL NO. 50 OF 2019

1. Nandu Alias Suryabhan Shivaji Ghuge,
Age: 29 years, Occu. Agriculture,
2. Bhausahab Nana Ghuge,
Age 31 years, Occu. Agriculture,
Both Appellants R/o. Nimon,
Tal. Nimon, Tal. Sangamner,
District Ahmednagar. ... APPELLANTS

VERSUS

1. The State of Maharashtra,
Through DYSP, Sangamner,
District Ahmednagar.
2. Nivrutti Namdeo Wagh,
Age: 61 years, Occu. Business,
R/o: Nimon, Tal. Sangamne,
District : Ahmednagar. ... RESPONDENTS

...

Mr. S. Y. Bhide, Advocate for Appellants
Mr. K. D. Mundhe, APP for respondent No.1 - State
Mr. A. P. Avhad, Advocate for Respondent No.2

...

CORAM : K.K. SONAWANE, J.

RESERVED ON : 14th MARCH, 2019.

PRONOUNCED ON : 19th MARCH, 2019. .

JUDGMENT :-

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

2. The appeal is directed against the impugned order dated 07-01-2019 passed by the learned Additional Sessions Judge, Sangamner, in Criminal Misc. Application (Bail) No. 238 of 2018

filed by the appellants for the relief of their pre-arrest bail under section 438 of the Code of Criminal Procedure (for short "Cr.P.C.") in Crime bearing No. 120 of 2018 registered at Sangamner Police Station, Taluka Sangamner, District Ahmednagar under Sections 323 and 504 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, it be referred to as "Act of 1989", for the sake or brevity). The appellants invoking remedy under Section 14-A(2) of the Act of 1989 preferred this appeal to redress their grievances.

3. The factual matrix, which led to the prosecution of appellants / applicants, in brief are that, the first informant - Shri Nivrutti Namdeo Wagh filed report on 11-12-2018 to the Police of Sangamner Taluka Police Station, District Ahmednagar that he accompanied with his family members used to reside in the village Nimon and eking livelihood by doing business of cobbler in the kiosk aside the road near plat-form of the flag hoisting. On 07-12-2018, in the noon hours at about 2.45 p.m. when he was at his kiosk for cobbler business, that time he saw both the appellants were quarreling with Sarpanch of village - Shri Sandip Deshmukh on account of distribution of water of the canal. In the quarrel, the appellant Nandu Ghuge came towards his kiosk and snatched away weapon "*Rapi*" from his hand. First informant

forcibly took out the weapon "*Rapi*" from the hands of appellant Nandu. Taking umbrage of removing "*Rapi*" from his hand, the appellants hurled abuses to the first informant on account of his caste by uttering word "*चमट्या*". They had also given threats of life to the first informant. The appellant – Nandu Ghuge gave one slap to the first informant. Thereafter, they both went away from the spot. In view of humiliation and insult on account of his caste by the appellants, first informant rushed to the Police Station and filed report.

4. Pursuant to the FIR, the Police of Sangamner Taluka Police Station, District Ahmednagar registered the Crime bearing No. 120 of 2018 under Sections 323 and 504 of the IPC and under Section 3(1)(r)(s) of the Act of 1989 and set the law in motion for collection of evidence into the matter. The appellants have an apprehension that they may be arrested in this crime. Therefore, apprehending arrest by the Police, the appellants rushed to the Court of Additional Sessions Judge, Sangamner and filed the Criminal Misc. Application (Bail) No. 238 of 2018 for relief of pre-arrest bail under section 438 of the Cr.P.C. The learned Sessions Judge considered the circumstances on record and found reluctant to nod in favour of appellants. In the result, the learned Additional Sessions Judge rejected the application for pre-arrest bail of the appellant under its order dated 07-01-2019,

which is the subject-matter of present appeal.

5. Mr. Bhide, learned counsel appearing for the appellants vehemently submits that the appellants have no concern at all with alleged crime, but, they are falsely implicated in this case. Learned Additional Sessions Judge did not appreciate the circumstances on record in it's proper perspective. In view of nature of allegations, there is no necessity for custodial interrogation of the appellants for the sake of investigation. The circumstances on record are not sufficient to constitute the offence under Act of 1989, therefore, bar under section 18 of the Act of 1989 cannot be invoked in this case. There is no possibility of tampering with the evidence of prosecution. The appellants are resident of village Nimon, Taluka Sangamner, District Ahmednagar and they are ready to abide the condition, if any, imposed on them. Hence, learned counsel for the appellants prays to grant relief of pre-arrest in favour of the appellants.

6. Learned APP for respondents raised objection and submits that the Section 18-A of the Act of 1989 put embargo on the Court for exercising powers under Section 438 of the Cr.P.C. The appellants abused the complainant on his caste within public view. The circumstances reflect from the FIR are sufficient to make out offence under Sections 3(1)(r)(s) of the Act of 1989. Therefore, application for anticipatory bail of the appellants

cannot be entertained and prayed for rejection of the same. The learned APP produced on record the relevant documents of investigation of the crime 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 present 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 appellants, *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 *mens rea* 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. In the matter in hand, it has been alleged that appellants hurled abuses in the name of caste of first informant by uttering word "चमटया". If word "चमटया" is taken out from the complaint for moment then other utterances 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 on his caste within public view. The allegations in the FIR of threat or intimidation would be at the most fall under the IPC.

10. Taking into consideration all aspect of the matter, I am of the view 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 out by the complainant against appellants. I am of the opinion that the

incriminating circumstances to show that intentional insult or intimidation with intent to humiliate the complainant 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 faice* on record to draw the inference that the 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. It is also required to take into consideration that other offences of I.P.C. applied against present appellants all are of bailable in nature. Therefore, custodial interrogation of appellant is not necessary for the sake of investigation. There is also no possibility of absconding of the accused in this crime. So far as the apprehension of tampering with the evidence of prosecution is concerned, the requisite conditions would be imposed on the appellants. In the result, there is no difficulty to allow the present appeal for the relief of anticipatory bail in favour of appellants-accused in the present crime. Hence, appeal deserves to be allowed.

11. In sequel, the appeal stands allowed. The impugned order dated 07-01-2019 passed by the learned Additional Sessions Judge, Sangamner in Criminal Misc. Application (Bail) No. 238 of 2018 filed by the appellants is hereby quashed and set-aside. The application of the appellants-applicants 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) Nandu @ Suryabhan Shivaji Ghuge and (2) Bhausahab Nana Ghuge be released on bail in the event of their arrest in connection with Crime No. 120 of 2018 registered at Sangamner Taluka Police Station, Sangamner, District Ahmednagar, for the offence punishable under sections 323 and 504 of the IPC as well as section 3(1)(r)(s) of the Act of 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 witnesses. The appellants / applicants shall attend the Sangamner Taluka Police Station, 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.

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

[K. K. SONAWANE]
JUDGE