

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

CRIMINAL APPEAL NO. 55 OF 2019

1. Yuvraj Asaram Koli,
Age: 54 years, Occu. Labour,
 2. Mukesh Yuvraj Koli,
Age: 32 years, Occu. Labour,
Both R/o : Aandalwadi, Tal. Raver,
District Jalgaon
- ...APPELLANTS

VERSUS

1. The State of Maharashtra,
Through its In-charge Police Officer,
Nimbohra Bk. Police Station,
Tal. Raver, Dist. Jalgaon.
 2. Prakash Wagho Tayade,
Age: Major, Occu.: Labour,
R/o: Aandalwadi, Tal Raver,
District Jalgaon.
- ...RESPONDENTS

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Mr. A.J. Patil, Advocate for appellants
Mr. K.D. Munde, APP for respondent No. 1-State
Respondent No. 2- served

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CORAM : K.K. SONAWANE, J.

RESERVED ON : 13th MARCH, 2019.

PRONOUNCED ON : 19th MARCH, 2019.

JUDGMENT :-

1. Heard. **Admit.** Present appeal is taken up for final hearing on merit with the consent of both parties to appeal.

2. The appeal is filed under section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "Act of 1989" for the sake or brevity) on behalf of the appellants for the relief of their pre-arrest bail in crime No. 13 of 2018 registered at Nimbhora Police Station, Tq. Raver, District Jalgaon for the offence punishable under Sections 143, 147, 148, 295, 323, 324, 336 read with section 149 of the Indian Penal Code (for short "IPC") as well as section 3(1)(q)(u) of the Act of 1989.

3. It has been alleged on behalf of prosecution that, the first informant - Shri Prakash Wagho Tayade on 26-04-2018 approached to the Police of Nimbhora Police Station, District Jalgaon and filed report alleging that there was hoarding erected on the water-tank in front of Ram Mandir on account of celebration of anniversary of Dr. Babasaheb Ambedkar scheduled to be held on 14-04-2018. There was marriage ceremony of Gokul Balu Koli in the village on 24-04-2018. The members of marriage party enjoyed the programme of dance and beating drum, etc. in the village. However, on the following day, the complainant and his associates realized that some miscreants flung cow-dung on the portrait of Dr. Babasaheb Ambedkar from the hoarding, which has high esteem by the members of Scheduled Caste and attempted to desecrate it to promote feelings of enmity, hatred or ill-will against members of the

Scheduled Castes and Scheduled Tribes. However, in order to maintain law and order in the village, the first informant and his associates, all rushed to the concerned Police for giving information about incident. But, meanwhile, at about 8.30 p.m. first informant received the message about incident of stone pelting in the village Aandalwadi. Therefore, the complainant and Police Personnels rushed to village. It reveals that taking umbrage of the complaint to police about desecration of portrait of Dr. Babasaheb Ambedkar from the hoarding, the villagers from Koli community indulged in act of rioting and stone pelting. They caused damaged to the police vehicles. First informant and others received injuries in the riot. Thereafter, first informant filed report to the Police for penal action against the miscreants.

4. Pursuant to First Information Report (for short "FIR") of the first informant, the Police of Nimbhora Police Station, Tq. Raver, District Jalgaon registered the Crime No. 13 of 2018 and set the Penal law in motion against the appellants and others. I.O. arrested most of the accused in this crime and obtained their police custody remand for investigation. The present appellants have an apprehension that they may be arrested in this crime. Therefore, apprehending their arrest at the hands of police, the appellants rushed to the Court of Additional Sessions Judge-2, Bhusawal and filed Criminal Bail Application No. 519 of 2018 for the relief of anticipatory bail under Section 438 of Cr.P.C.

However, learned Additional Sessions Judge found reluctant to grant relief of pre-arrest bail to these appellants and rejected the application filed under Section 438 of Cr.P.C. The impugned order of learned Additional Sessions Judge-2, Bhusawal is challenged in this appeal.

5. The learned counsel for the appellants vehemently submits that appellants have no concerned at all with the alleged crime. They are falsely implicated in this case on suspicion. The incident of riot occurred long back on 25-04-2018. The IO arrested most of the accused in this case and also availed their custodial interrogation. The allegations against appellants are vague and stray in nature. The investigation has already been completed. Therefore, custodial interrogation of the present appellants is not necessary. There is no possibility of absconding the accused. They are ready to abide conditions, if any, imposed on them. Hence, he requested to nod in favour of appellants for relief of anticipatory bail.

6. Learned APP for respondent-State raised objection and submit that the appellants were absconding since long. There is possibility of tampering of the evidence of prosecution. The alleged incident of riot created communal tension in the village. In case, the appellants are released on bail, there is every possibility of recurrence of the incident of similar nature. He

further 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. Therefore, application for anticipatory bail of the appellants cannot be entertained. 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 instant appeal, the recitals of the FIR reflects that the first informant was intending to cast allegation for the offence punishable under Section 3(1)(t) and not Section 3(1)(q), as referred by the learned Sessions Judge, while passing the impugned order in the matter. There is also an ambiguity in the provisions of Atrocities Act, 1989, applied by the police while registration of crime. Therefore, after considering the allegations nurtured on behalf of first informant in the alleged FIR, it can be seen that the provisions of Section 3(1)(t) and (u) of the Act of 1989 would be made applicable in this crime. Hence, I proceed for assessment of circumstances on record for relief prayed on behalf of appellants by appreciating the charges under Section 3(1)(t) and (u) of the Act, 1989.

9. The prosecution nurtured the allegations for the offences punishable under Section 3(1)(t)(u) 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*
- (s) xxxxxxxx*

(t) destroys, damages or defiles any object generally known to be held sacred or in high esteem by members of the Scheduled Castes or the Scheduled Tribes ;

Explanation : for the purposes of this clause, the expression “Object” means and includes statue, photograph and portrait;

(u) by words either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes”

10. After perusal of the FIR lodged against the present appellants, *prima facie* reveals that the ingredients of aforesaid penal provisions do not match with the factual score of the present case. It would be difficult to draw adverse inference against the appellants in regard to commission of crime as alleged under section 3(1)(t)(u) of the Act of 1989. It has been alleged that appellant and their 20/25 accomplices committed offence of rioting in the village. They pelted stones and caused damage to the Government vehicle as well as inflicted injuries to the members of Scheduled Caste and Scheduled Tribes community. There were no specific allegations against the appellants in the FIR about their active participation in the activities of desecration of portrait of Dr. Babasaheb Ambedkar

being an miscreants for throwing cow dung on the portrait of Dr. Babasaheb Ambedkar. The specific overtact or participation of the appellants in the activities of promoting feelings of enmity, hatred or ill-will against members of the Scheduled Castes or Scheduled Tribes could not be *prima facie* perceived from the FIR itself. Therefore, the allegations nurtured in the FIR are not sufficient to make out the offence under the Act of 1989 against the appellants. There is no impediment to entertain the present application for anticipatory bail of the appellants even after statutory bar as envisaged under section 18-A of the Act of 1989.

11. It is also significant to note that there are sweeping and omnibus allegation against appellant for the alleged act of rioting and offence under the Act of 1989. There are no specific aspersion attributed against each of the present appellants to show their involvement in the crime. It would unsafe to arrive at the conclusion that *prima facie* appellants have an active role in this crime. At this juncture, it would be profitable to make reference to the observations of the Co-ordinate Bench of this Court in the matter of ***Shashikant Ramhari Tambe and others Vs. State of Maharashtra*** reported in **2008 All MR (Cri)2132**, in which it has been observed in paragraph No. 5 that:

“5. Useful reference may be made to a decision of the Supreme Court in the case of *Mukesh Kumar Saini vs. State (Delhi Administration)* reported in 2002 ALL

M.R. (Cri.) JOURNAL 41. In the said case, it was observed that there must be specific accusation alleged against each of the accused and Section 34 of the Indian Penal Code cannot be pressed into service. Omnibus statement that all the accused persons uttered allegedly humiliating word may not be enough. In the present case, there is no specific accusation alleged against each of the accused. Looking to the above facts, I am inclined to grant anticipatory bail to the applicants.”

12. As regards other charges of riot, assault with deadly weapon and causing damage to the property, etc. I find that offence came to be registered long back in the month of April, 2018. The IO has arrested most of the accused in this crime and obtained police custody remand for custodial interrogation. Learned APP has tendered report of the concerned IO in this matter, in which the IO expressed apprehension of tempering of evidence of the prosecution at the hands of appellants as well as there is possibility of recurrence of similar nature of incident following communal tension after the alleged incident in the village. Moreover, the appellants are absconding since the day of incident, hence, IO raised objection to enlarge the appellants on anticipatory bail.

13. In view of factual aspect of the matter, I am not in agreement with concerned IO to curtail the valuable liberty of the appellants for the sake of investigation. Most of the investigation has already been completed. There is no necessity of custodial interrogation of the appellants in this matter. There are also no

any recovery at the instance of appellants. Therefore, it would be unjust and improper to put restrictions on the personal liberty of the appellants pending investigation / trial. Hence, appeal deserves to be allowed.

14. In sequel, the appeal stands allowed. The impugned orders dated 05-12-2018 passed by the learned Additional Sessions Judge-2, Bhusawal, in Criminal Bail Application No. 519 2018 is hereby quashed and set-aside. The application of the appellants filed under Section 438 of the Cr.P.C. for their pre-arrest bail before the learned trial Court stands allowed. The appellants- (1) Yuvraj S/o Asaram Koli and (2) Mukesh Yuvraj Koli be released on bail in the event of their arrest, in connection with Crime No. 13 of 2018 registered at Nimbhora Police Station, Tq. Raver, District Jalgaon, for the offence punishable under Sections 143, 147, 148, 295, 323, 324 and 336 read with section 149 of the IPC as well as section 3(1)(t)(u) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on furnishing PR bond of Rs.15,000/- 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 Nimbhora Police Station, District Jalgaon, District Jalgaon, on every Sunday in between 11.00 a.m. to 3.00 p.m. till filing of the charge-sheet if not filed

before the learned Magistrate at Raver, District Jalgaon, and shall co-operate with the Investigating Officer for the sake of investigation into the crime. Inform the concerned Investigating Officer accordingly.

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

[K. K. SONAWANE]
JUDGE

MTK.
