

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

CRIMINAL APPEAL NO. 109 OF 2019

1. Rajendra S/o Govind Munde,
Age: 32 years, Occu. Agri.,
2. Jitendra S/o Govind Munde,
Age: 30 years, Occu. Agri.,
3. Badrinath S/o Merulal Munde,
Age: 35 years, Occu. Agri.,
4. Kantabai W/o Govind Munde,
Age: 50 years, Occu. Household,
R/o. Bodhadi (Bk.), Tq. Kinwat,
Dist. Nanded.

...APPELLANTS

VERSUS

1. The State of Maharashtra,
Through Superintendent of Police
Nanded.
2. P.S.I. Kinwat Police Station,
Kinwat, Tq. Kinwat, Dist. Nanded.
3. Surekha W/o. Sunil Togle,
Age: 32 years, Occu.: Service,
R/o: Bodhadi (Bk.), Tq. Kinwat,
District Nanded.

...RESPONDENTS

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Mr. Ujwal Subhash Patil, Advocate for Appellants
Mr. P. G. Borade, APP for Respondents No. 1 and 2 - State
Mrs. R. Jamdadhe, Advocate for Respondent No. 3

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CORAM : K.K. SONAWANE, J.

**RESERVED ON : 07th MARCH, 2019.
PRONOUNCED ON : 08th MARCH, 2019.**

JUDGMENT :-

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

2. This 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 appellants for the relief of their pre-arrest bail in Crime No. 320 of 2018 registered at Kinwat Police Station, District Nanded, for the offence punishable under Sections 324, 504 and 506 read with Section 34 of the Indian Penal Code (for short "IPC") as well as Section 3(1)(r)(s) of the Act of 1989.

3. The prosecution case in short compass is that, complainant Surekha W/o. Sunil Togle on 31-12-2018 approached to the Police of Kinwat Police Station, District Nanded and ventilated her grievance that she was discharging her duty as "*Anganwadi Sevika*" in *Vitthalwadi Anganwadi*, located at village Bodadhi. On 25-12-2018, at about 5.00 p.m. when complainant was at home, the appellants, who were residing abutting to her house, arrived on the road in front of her house and started reprimanding the complainant, for what reason she put the garbage from the *Guttar* on the road. There was hot exchange of words in between complainant and appellants. In the fight, appellants abused complainant on her caste by uttering words, '‘*थेडे, मांगरडे*’'. The appellants also gave threat of dire consequences to the complainant. It has also alleged that on the following day, on 26-12-2018 at about 2.00 p.m. appellant-Jitendra called appellant- Badrinath Munde on cell phone and

they all hurled castiest abuses to the complainant. Thereafter, on 29-12-2018 also when complainant was alone at home, that time, the appellants taking umbrage of putting the garbage from the *Guttar* on road, etc., dragged the complainant out of the house and beaten-up her by wooden log and pieces of bricks. The brother of complainant attempted to intervene in the fight, but, he was also assaulted by appellants. The neighbourers thronged at the spot and intervened in the fight. Thereafter, complainant was escorted to the hospital for medical treatment. Eventually, she filed report to the police for penal action against the appellants.

4. Pursuant to First Information Report (FIR) filed by Surekha Sunil Togle, the Police of Kinwat Police Station, Nanded, District Nanded registered the Crime No. 320 of 2018 for the offence punishable under Sections 324, 504 and 506 read with Section 34 of the IPC as well as Section 3(1)(r)(s) of the Act of 1989, and set the penal law in motion. The 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, Nanded and filed the application bearing Misc. Criminal (Bail) Application No. 45 of 2019, 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 the appellants and

rejected the application filed under Section 438 of Cr.P.C. on the ground that in view of statutory bar under Section 18A of the Act, 1989, the appellants are not entitled for any relief of anticipatory bail. The learned Additional Sessions Judge passed the impugned order of rejecting application of appellants for anticipatory bail, which is challenged in the present appeal.

5. The learned counsel for the appellants vehemently submits that the appellants are innocent of the charges pitted against them. They have not committed any crime, but, they are falsely implicated in this case on account of dispute in between neighbours. The learned counsel submits that appellant No.4 also filed cross-complaint against the first informant and others for the allegations of assault, intimidation and loss of valuable articles, etc. According to him, the present complaint was filed by complainant only to give counter-blow to the FIR filed on behalf of appellant No.4. According to learned counsel, there are no circumstances *prima facie* on record to constitute the offence under the Act of 1989. There was no *malafide* intention to insult the complainant on her caste. Therefore, he requested to allow the appeal and release the appellants on anticipatory bail.

In support of arguments, learned counsel for appellants placed reliance on the Judgment delivered by this Court in a case of – *Kiran S/o. Madhukar Ingle Versus The State of Maharashtra and another*, (Criminal Appeal No. 787 of 2018,

decided on 26th February, 2019).

6. Learned APP for respondents No.1 and 2 and learned counsel appearing for respondent No.3 – victim of the crime, vociferously opposed the contentions propounded on behalf of complainant and submits that the allegations nurtured on behalf of complainant against appellants are sufficient to constitute the offence under the Atrocities Act. The circumstances *prima facie* reflects that appellants with mala fide intention hurled castiest abuses to the complainant to humiliate and insult her within public view. Therefore, in view of statutory bar under Section 18A 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 is not maintainable within purview of law.

The learned counsel for respondent No.2 filed affidavit-in-reply on record. She has also placed reliance on the expositions of law in the case of – *Vilas Pandurang Pawar and another Versus State of Maharashtra and others*, reported in, *AIR 2012 SC 3316*.

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 appellants, *prima facie* 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 on the respective dates of the incident picked up the quarrel with complainant and hurled abuses by uttering words ‘‘*થેડે, માંગરડે*’’. The appellants also attempted to intimidate complainant and her brother for dire consequences, because of dispute on account of putting the waste material/garbage from the *Guttar* on the road. If the words ‘‘*થેડે, માંગરડે*’ are taken out from the complaint for a moment, then other utterance 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 her caste within public view.

11. After scrutiny of FIR, it reveals that, allegations nurtured in the FIR appears to be general and stray in nature. The complainant did not make any specific allegation about assault and abuse her on caste against each of the appellants. The allegation seems to be sweeping and omnibus in nature. There were no specific accusation against each of the appellants to draw adverse inference against them about commission of crime. At this juncture, it would be apposite to make a reference to the observations of the Co-ordinate Bench of this Court in the case of - ***Shashikant Ramhari Tambe and others Versus 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. It is also essential to take into consideration that in the present crime, the FIR came to be filed at a belated stage after efflux of colossal period since 25-12-2018. There was another Crime No. 321 of 2018 registered against first informant and others of the present crime. These circumstances are, *prima facie*, demonstrate that present complaint may be fall out of strain relations between the neighbourers. In regard to other charges / offences under the IPC, I find that there is no necessity for custodial interrogation of the appellants for the sake of investigation. There is no possibility of absconding the appellants as they are permanent resident of village Bodhadi (Bk.), Taluka Kinwat, District Nanded.

13. In view of nature of subject-matter and gravity of the allegations, I am of the considered opinion that, *prima facie*, there is no material on record to draw an inference that the

appellants are the persons to be treated as an accused for an offence under the Act of 1989. As such, there is no statutory bar for this Court to consider the application of appellants filed under Section 438 of the Cr.P.C. As referred above, the custodial interrogation of the appellants is not necessary for the sake of investigation for other charges of IPC. 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 to sub-serve the purpose. Therefore, there is no impediment to allow the present appeal for the relief of anticipatory bail as prayed in the present appeal.

14. In sequel, the appeal stands allowed. The impugned orders dated 25-01-2019 passed by the learned Additional Sessions Judge, Nanded, in Misc. Criminal (Bail) Application No. 45 of 2019, 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 is hereby allowed. The appellants- (1) Rajendra S/o Govind Munde, (2) Jitendra S/o Govind Munde, (3) Badrinath S/o Merulal Munde, and (4) Kantabai W/o Govind Munde, be released on bail in the event of their arrest in connection with Crime No. 320 of 2018 registered at Kinwat Police Station, District Nanded, for the offence punishable under Sections 324, 504 and 506 read with

Section 34 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 Thousands Only) 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 Kinwat Police Station, District Nanded, 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.

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

Sd/-

[K. K. SONAWANE]
JUDGE

MTK.
