

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

CRIMINAL APPEAL NO. 164 OF 2019

1. Raju @ Rajendra Dashrath Khaire
Age: 62 yrs. Occu. Agril.,
2. Mahendra @ Anna Rajendra Khaire,
Age: 27 years, Occu. Agri.

Both R/o. Kesapur, Tal. Rahuri,
Dist. Ahmednagar

...APPELLANTS

VERSUS

1. The State of Maharashtra,
Through Police Station Officer
Shrirampur City Police Station,
Tq. Shrirampur, Dist. Ahmednagar.
2. Sharada Shivaji Desai,
Age: 33 years, Occu.: Agri.,
R/o. Kesapur, Tal. Rahuri,
Dist. Ahmednagar.

...RESPONDENTS

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Mr. Neetin V. Gaware, Advocate for appellants
Mr. K. N. Lokhande, APP for respondent No. 1-State
Ms. Sunita G. Sonawane, Advocate for respondent No. 2

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CORAM : K.K. SONAWANE, J.

**RESERVED ON : 03rd MARCH, 2019.
PRONOUNCED ON : 09th APRIL, 2019.**

JUDGMENT :-

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

2. Present appeal is directed against the impugned order of rebuffing the relief of pre-arrest bail of the appellants in Crime No. I-61 of 2019 registered with Shrirampur City Police Station, Taluka Shrirampur, District Ahmednagar under Sections 354, 324, 504, 506 of the Indian Penal Code (IPC) and Section 3(1)(w)(i) as well as Section 3(2)(va) 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 nut-shell is that, on 27-01-2019, the complainant Sharada Shivaji Desai visited to the Police of Shrirampur City Police Station, Taluka Shrirampur, District Ahmednagar, and filed the report that she is residing with husband and in-laws at village Ukkalgaon, Tq. Shrirampur. There is a joint family property of agriculture land Gat No. 195/2, located in the vicinity of village Belapur Tq. Shrimrapur. The land is mutated in the name of her mother-in-law. The dispute is going on in between present appellants and her husband on account of agricultural land. It has been alleged that on 09-01-2019, at about 13.00 hours, when the first informant-complainant and her husband were in the field for watering the crops that time the appellants raised objection and prevented the first informant as well as her husband from agricultural operation

in the field. The first informant and her husband made attempt to convince the appellants, but, they were not in a condition to listen. The appellant-accused - Raju Khaire started assaulting the husband of complainant by means of handle of spade on his left fore-arm, thigh and back, etc. The appellant – Raju Khaire also pulled on and torn her blouse and attempted to outrage the modesty by pressing her breasts. In the incident of assault, the husband of complainant sustained injuries on his thumb of left hand, thigh and back, etc. The assailant also threatened to kill the complainant and her husband, and therefore, she filed the report about the incident to police for penal action against the appellants-accused.

4. Pursuant to FIR of complainant Sharada Desai, Police of Shrirampur City Police Station registered the Crime No. I-61 of 2019 for the offences punishable under Sections 354, 324, 504, 506 of the IPC and Section 3(1)(w)(i) of the Act of 1989, and set the penal law in motion. The appellants, apprehending their arrest in the present crime, filed the application before the learned Additional Sessions Judge, Shrirampur, for their pre-arrest bail bearing Criminal Misc. Application No. 18 of 2019 under Section 438 of the Code of Criminal Procedure, 1973 (Cr.P.C.). But, the learned Additional Sessions Judge found reluctant to nod in favour of applicants-appellants for their pre-arrest bail by exercising powers under Section 438 of the Cr.P.C.

Learned trial Court observed that *prima facie*, it is evident that the applicants-appellants, in furtherance of their common intention, attempted to outrage the modesty of first informant and thereby committed an offence under the Act of 1989 against woman belonging from Scheduled Castes. The weapons used in the crime are yet to be recovered and to facilitate further investigation, custodial interrogation of both applicants is necessary. Eventually, learned Additional Sessions Judge rejected the application of appellants for anticipatory bail and passed the impugned order, the validity, propriety and correctness of which, is agitated in the present appeal.

5. Mr. Nitin Gaware, learned counsel for the appellants vehemently submitted that the appellants have not committed any crime as alleged by the prosecution. But, they are falsely implicated in this case. According to the learned counsel, there is no evidence to establish the involvement of appellants in the alleged crime. The incident of assault shown occurred on 09-01-2019, following dispute of land in between the appellants and respondent No. 2. However, FIR came to be lodged almost after 18 days of the incident, which creates clouds of doubt in the prosecution case. The learned counsel submits that the medical evidence of injuries received to husband of first informant does not support the prosecution case. Therefore, the custodial interrogation of the appellants-accused is not necessary and

unwarranted. Learned counsel explained the circumstances in detail and submits that the allegations nurtured in FIR would not attract the provisions under the Act of 1989. There is also no reference in the FIR that the appellants-accused committed crime not being the members of Scheduled Castes and Schedule Tribes. It was also not shown that they were aware or they had an knowledge about the caste of first informant. These are the basic ingredients of offence under Section 3(1) and 3(2) of the Act of 1989 for consideration at this initial stage pertains to pre-arrest bail of the appellants-accused. Therefore, he requested to entertain the application filed under Section 438 of Cr.P.C. and grant the relief of pre-arrest bail to the appellants-accused in this case.

In support of his submissions, learned counsel for appellants placed reliance on the judgments in the cases of ***Vilas Pandurang Pawar and another Vs. State of Maharashtra reported in 2012 Cri.L.J. 4520, Kiran Madhukar Ingle Versus State of Maharashtra and another (Criminal Appeal No. 787 of 2018), dated 26th February, 2019, Udhav Gyanoba Budhawant Vs. The State and others (Criminal Appeal No. 18 of 2019) dated 27th February, 2019 and Nitin Sampatrao Maske and another Vs. The State of Maharashtra (Criminal Appeal No. 9 of 2019) dated 7th March, 2019.***

6. Learned APP for the respondent No. 1 and learned counsel

appearing on behalf of respondent No. 2 vociferously raised objections and submitted that the Section 18A of the Act of 1989 put the statutory bar for exercising the powers under Section 438 of the Cr.P.C. by the Court. The appellants intentionally touched the complainant by pulling her blouse with an ill-intention as well as committed act of sexual nature by pressing her breast. The circumstances reflect from the FIR are sufficient to draw inference that appellants committed an offence under the Act of 1989. In view of statutory bar under Sections 18 and 18-A of the Act, 1989, the application for relief under Section 438 of Cr.P.C. cannot be entertained for anticipatory bail as prayed on behalf of appellants. The circumstances reflect from the FIR are sufficient to make out the offence under sections 3(1)(w)(i) as well as 3(2)(va) of the Act of 1989. Therefore, there is no propriety to grant relief of anticipatory bail under section 438 of the Cr.P.C. 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***), as referred by the appellants-accused 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)(w)(i) and 3(2) (va) of the Act of 1989 against the present appellants, which read as under :

“3. Punishments for offences of atrocities :-

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

(w)(i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent;”

“3. Punishments for offences of atrocities :-

(2) Whoever, not being a member of a Scheduled Caste or a

Scheduled Tribe :-

- (i) xxxxxxxx to
- (v) xxxxxxxx
- (va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offence and shall also be liable to fine."

9. After perusal of FIR lodged against the present appellants, *prima facie*, it reveals that the ingredients of aforesaid penal provisions do not match with the factual score of the present case. It is to be noted that as per Section 3 of the Act of 1989, it must be *prima facie* shown that the appellants-accused are not the members of Scheduled Caste or Scheduled Tribes and they are aware that first informant is from Scheduled Caste community. The knowledge of the accused about the caste of a person against whom, the offence came to be committed, being member of Scheduled Castes or Scheduled Tribes, is also essential ingredient to constitute the offence under Section 3(1) or Section 3(2) the Act of 1989. The opening sentence of Sections 3(1) and 3(2) of the Act of 1989, itself shows, "whoever not being a member of Scheduled Caste or Scheduled Tribe". It means that there must be *prima facie* affirmation or say in the FIR / complaint that the appellants-accused are not the member of Scheduled Caste or Scheduled Tribe. In the present complaint, absolutely there is no averment or whisper to the effect that appellants-applicants are belonging from higher caste

or atleast they committed crime not being a member of Scheduled Castes or Scheduled Tribes. Moreover, it has not mentioned in the FIR that the appellants-accused are aware or have a knowledge about caste/community of first informant. These basic ingredients of the Sections 3(1)(w)(i) and 3(2)(va) of the Act of 1989 are lacking in the present case and the absence of the same will cause serious impact as to the allegations to constitute offence under Act of 1989.

10. Taking into consideration over-all aspects of the matter and in spite of bar under Section 18 of Act, 1989, for invocation of power under Section 438 of Cr.P.C., it is still open for this Court to find out by looking to the FIR of the case itself as to whether *prima facie* case is made out against the appellants. The circumstances on record are not sufficient to draw the inference that there are material *prima facie* on record to make out case under Act of 1989 against the appellants-accused. Therefore, there is no impediment to entertain the application of appellant for the relief of his pre-arrest bail filed under Section 438 of the Cr.P.C.

11. In regard to the allegations of assault or criminal force with intent to outrage her modesty or criminal intimidation as envisaged under Sections 354, 504 and 506, etc. of the IPC, I find that custodial interrogations of the appellants-accused are

not necessary for the sake of investigation. There is no any sort of recovery from the appellants nor there is any apprehension about absconding of the appellants in this crime. Most of the part of investigation has already been completed. Therefore, there would not be any impediment 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.

12. In sequel, the appeal stands allowed. The impugned order dated 07-02-2019 passed by learned Additional Sessions Judge, Shrirampur, in Criminal Misc. Application No. 18 of 2019 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 - (1) Raju @ Rajendra Dashrath Khaire and (2) Mahendra @ Anna Rajendra Khaire be released on bail in the event of their arrest in connection with Crime No. I-61 of 2019 registered at Shrirampur City Police Station, Ta. Shrirampur, District Ahmednagar, for the offence punishable under Sections 354, 324, 504, 506 of the IPC and Section 3(1)(w)(i) as well as Section 3(2)(va) of the Act of 1989, on furnishing PR bond of Rs.20,000/- (Rupees Twenty Thousands) 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 Shrirampur City Police Station, Ta. Shrirampur, 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.

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

[K. K. SONAWANE]
JUDGE

MTK.