

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

CRIMINAL APPEAL NO. 190 OF 2019

1. Jairam S/o Shankarrao Tale,
Age: 36 years, Occ. Service as Primary Teacher
R/o : Harbal(Pk) Tal. Kandhar,
District Nanded.
2. Mira W/o Jairam Tale,
Age: 36 years, Occu. Service as Primary Teacher
in Zilla Parishad School R/o as above. ...APPELLANTS

VERSUS

1. The State of Maharashtra,
Through Police Inspector,
Police Station, Kandhar
Taluka Kandhar, District Nanded.
2. Rahul Vishwanath Kamble,
Age: 35 Years, Occu.: Nil,
R/o : Sujawadi Taluka Kandhar,
District Nanded. ...RESPONDENTS

...

Mr. A.V. Indrale Patil, Advocate for appellants
Mr. D.R. Kale, APP for respondent No. 1-State
Mr. G.G. Suryawanshi, Advocate for respondent No. 2

....

WITH

CRIMINAL APPEAL NO. 209 OF 2019

Savita W/o Gajanan Ghume,
Age: 26 years, Occu. Service,
R/o : Sujawadi, Tq. Kandhar,
District Nanded, Tq. & Dist. Nanded
(mentioned as Swati Gajanan Ghume
in FIR) ...APPELLANT

VERSUS

1. The State of Maharashtra,
Through Police Inspector,
Police Station, Kandhar
District Nanded.

2. Rahul S/o Vishwanath Kamble,
Age: 35 Years, Occu.: Nil,
R/o: Sujanwadi Taluka Kandhar,
District Nanded.

...RESPONDENTS

...
Mr. S.J. Salunke, Advocate for appellant
Mr. D.R.Kale, APP for respondent No. 1-State
Mr. G.G. Suryawanshi, Advocate for respondent No. 2
...

CORAM : K.K. SONAWANE, J.

RESERVED ON : 2nd APRIL, 2019.

PRONOUNCED ON : 8th APRIL, 2019.

JUDGMENT :-

1. Heard. **Admit.** The appeals are taken up for final hearing on merit with the consent of both parties to appeals.
2. These appeals are filed under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on behalf of appellants for the relief of their pre-arrest bail in crime No. 23 of 2019 registered at Kandhar Police Station, District Nanded for the offence punishable under Sections 324, 143, 147, 148, 149, 323, 504 and 506 of the Indian Penal Code (for short "IPC") as well as section 3(1)(r)(s) and 3(1)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "Act of 1989" for the sake or brevity). Both these appeals are arising from one and the same Crime No. 23 of 2019 and also rests on the identical issue of anticipatory bail under Section 438 of the Code of Criminal

Procedure (Cr.P.C.) in the offence of the Act of 1989, therefore, these allied appeals are dealt with simultaneously for its adjudication on merit by this common Judgment.

3. The prosecution case in short compass is that, the first informant Rahul Vishwanath Kamble resident of Sujanwadi, Ta. Kandhar, District Nanded on 30-01-2019 approached to the Kandhar Police Station and lodged the report that on 29-01-2019 there was a function of prize distribution in the Zilla Parishad School on the eve of Republic day. But the dispute arose in between the complainant and one Shankar Pandurang Ghume as well as Jairam Tale on account of prize money. Thereafter, he returned to home. The first informant further cast allegations that the present appellants along with other eight to ten persons had been to his house and started giving abuses in filthy language following dispute occurred in the School. When the first informant asked them not to abuse him without cause, that time one of the assailant Shri Shankar Pandurang hurled castiest abuses uttering words "Mahargya" on his caste and assaulted with stick on his head. The assailant Rameshwar Ghume attacked on his right wrist with a knife. Yogesh Ghume caused injury on his back with a stone and Mathurabai Ghume whereas the appellant Savita @ Swati Ghume assaulted his mother with the help of sticks. Accused Rameshwar and Yogesh also beaten up his father Vishwanth. Accused Yogesh and Ramchandra assaulted

his brother Dayanand with a stone. In the scuffle, the assailant snatched away the golden ring of first informant and Mangalsutra of his mother. The accused gave threats of life to the first informant.

4. Pursuant to First Information Report (for short "FIR"), the Police of Kandhar Police Station, Kandhar, District Nanded registered the Crime No. 23 of 2019 and set the Penal law in motion against the appellants and others. 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, Kandhar and filed the applications bearing Misc. Criminal Applications No. 23 and 24 of 2019 for the relief of anticipatory bail under Section 438 of Cr.P.C. However, learned Sessions Judge found reluctant to grant relief of pre-arrest bail to these appellants and rejected the applications filed under Section 438 of Cr.P.C. The impugned order of learned Additional Sessions Judge is challenged in these appeals.

5. The learned counsel for the appellants vehemently contends that the appellants are innocent of the charges levelled against them. They have not committed any crime, but they are falsely implicated in this case on account of political rivalry. The learned counsel drawn the attention of this Court towards the

documents of FIR of Crime No. 25 of 2019 and submits that there was counter complaint filed by one Yogeshwar Shankar Ghume one of the co-accused in this crime. Therefore, the first informant Rahul Kamble in order to give counter-blow to the complaint vide Crime No. 25 of 2019, filed the present false complaint against the appellant and others. He explained that the FIR did not disclose the commission of any offence under Act of 1989. The appellants are resident of Harbal and Sujanwadi village, Ta. Kandhar and are serving as Primary teachers in the Zilla Parishad School. There is no possibility of absconding the accused. They are ready to abide the conditions, if any, imposed on them. Their custodial interrogation is not necessary in this case. Hence, he requested to nod in favour of appellants for relief of anticipatory bail.

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) and 3(2)(v) of the Act of 1989. Moreover, from the date of commission of crime, the appellants are absconded. The IO could not find out their whereabouts for recovery of stolen gold ornaments. Therefore, application for anticipatory bail of the appellants may not be

entertained. The learned APP produced on record the relevant documents of investigation of the crime for perusal. The learned counsel for respondent No. 2 also filed affidavit-in-reply on record.

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 appeals, the prosecution applied the provisions of section 3(1)(r)(s) and 3(2)(v) 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.”

“3. Punishments for offences of atrocities :-

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

(i) xxxxxxxx to

(iv) xxxxxxxx

(v) commits any offence under the Indian Penal Code (45 of 1960) punishable with imprisonment for a

term of ten years or more 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 within imprisonment for life and with fine;"

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 appellant hurled castiest abuses as "**महारग्या**" during the altercation on account of distribution of prizes, in the school on the eve of Republic Day, in between the first informant and the appellants. If word "**महारग्या**" is taken out from the complaint for

a moment then other utterances that, “‘तु लई माजलास’”, 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 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 section 506 of the IPC.

11. There are also allegations about offence under Section 3(2) (v) of the Act of 1989. In order to attract the offence under Section 3(1) or 3(2) of the Act of 1989, it is essential to point out that the appellants committed crimes under Act of 1989, not being a members of Scheduled Caste or Scheduled Tribe. Moreover, in regard to section 3(2)(v); it is necessary to show that they committed offence under IPC, punishable with imprisonment for term of ten years or more against person belonging from Scheduled Castes or Scheduled Tribes category or his property. In the instant case, there are no whisper or averment in the FIR that appellants are not the members of Scheduled Castes or Scheduled Tribes. There is also no reference in the FIR that the appellants-accused were aware or they had an knowledge about the caste of first informant. These are the main and basic ingredients of offence under Section 3(1) and 3(2) of the Act of 1989 for its consideration at this initial stage pertains

to pre-arrest bail of the appellants-accused under section 438 of Cr.P.C.

12. In the matter in hand, it has been alleged that, the appellants-accused and their accomplices committed offence under Sections 143, 147, 148, 324, 323, 504, 506 read with Section 149 of the IPC. It is to be noted that all these offences levelled against appellants are not punishable with imprisonment for term of ten years or more. Therefore, ingredients of Section 3(2)(v) of the Act of 1989 are not at all attracted against the present appellants to invoke the statutory bar under Section 18 or 18A of the Act of 1989.

13. In the light of aforesaid discussion, there is no impediment to entertain the application filed on behalf of appellants for their pre-arrest bail under Section 438 of the Cr.P.C. The learned trial Court also observed in the impugned order that *prima facie* statutory bar under Section 18 of the Act of 1989 would not attract against present applicants/appellants. But, the learned Sessions Judge gave much more emphasis on the circumstances that the gold ornaments of the first informant and his mother were shown missing in the FIR. It has been alleged that the appellants and their associates snatched away these gold ornaments and committed offence of robbery. Learned trial Court also considered that the appellants-accused and other

assailants attacked the first informant and others by means of dangerous weapon like stick, stone, knife, and etc. Therefore, learned trial Court found reluctant to grant relief of anticipatory bail as contemplated under Section 438 of the Cr.P.C. in this crime.

14. At this juncture, learned APP produced the report of concerned IO and the relevant document of investigation of crime on record. The concerned IO raised objection for releasing these appellants on anticipatory bail, in present crime for the reason that the allegations nurtured against the appellants are serious in nature and investigation is in progress. The appellants assaulted Mathurabai by means of stick and caused serious injuries. The weapons utilized by the appellants for commission of crime are remained to be recovered. There is also possibility of tempering of evidence. In case, the appellants are released on anticipatory bail there may be an problem of law and order arise within the vicinity. Therefore, concerned IO requested not to admit the appellants on bail.

15. It is worth to mention that pursuant to allegations nurtured in the FIR on the part of first informant, Police arraigned in all eleven accused being assailants in this crime including present appellants. In view of nature of subject-matter and the allegations nurtured on behalf of first informant, I find there is no

propriety to curtail valuable personal liberty of the appellants for the sake of investigation. The appellants are family members, except appellant Jairam Tale. The offence came to be registered in the month of January, 2019. The investigation papers adumbrates that most of the investigation into the crime is on the verge of completion. The IO recorded statements of witnesses acquainted with facts of the case. He has also procured relevant documents about injuries received to the victims of the crime. However, in regard to issue of recovery of gold ornaments, it is to be noted that first informant in his report categorically mentioned that the gold ornaments found missing during the occurrence of the incident of assault but he is not certain as to whether the assailants had taken away the gold ornaments. In such specific averments in the FIR, it is fallacious to curtail liberty of the appellants for the sake of investigation to recover the gold ornaments in this crime.

16. As referred above, bare lodging the FIR of the incident of assault on first informant and his mother do not itself attract the provisions of the Act of 1989. It has been alleged that the appellants hurled castiest abuses and uttered the words "*Mhargya*" during the altercation. 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. There is also no whisper in the FIR that the appellants committed crimes not being the members of Scheduled Caste and Scheduled Tribes. The very opening words of Section 3(1)(r)(s) or 3(2)(v), "whoever not being a member of Scheduled Caste or Scheduled Tribes." itself put the onus on the complainant/first informant to make specific averments in the FIR that appellants are not the members of Scheduled Castes and Schedules Tribes or they are from higher community. This important factor is lacking in this matter. Therefore, the statutory bar under Section 18A of the Act of 1989 would not be made operational in these appeals to entertain the applications filed on behalf of appellants for their pre-arrest bail under section 438 of Cr.P.C. The reasons mentioned for rebuffing the relief of pre-arrest bail for the sake of investigation by the learned trial Court appears to be perverse and unsustainable one.

17. It would be reiterated that, the present crime came to be registered in the month of January, 2019. The material part of the investigation has already been completed. There is no necessity of custodial interrogation of the appellants-accused for the sake of investigation. It would fallacious to curtail the personal liberty of the appellants for the sake of recovery of gold ornaments alleged to be missing in the incident of assault. In contrast, the first informant has no knowledge, how the

ornaments were missing during the melee. The IO did not whisper about arrest of rest of the co-accused in the crime, in his report filed on record. But, in view of FIR filed long-back in the month of January, 2019, it would reasonably be presumed that the material part of the investigation has been completed, and there would not be any propriety to rebuff relief of pre-arrest bail of the appellants in this case. In regard to the apprehension of tampering with the evidence of prosecution witnesses, as expressed by the IO in his report, requisite conditions would be imposed on the appellants. Therefore, appeals filed on behalf of appellants deserve to be allowed.

18. In sequel, the appeals stand allowed. The impugned orders dated 13-02-2019 passed by the learned Additional Sessions Judge, Kandhar, District Nanded, in Bail Applications No. 23 and 24 of 2019 are hereby quashed and set-aside. The applications of the appellants filed under Section 438 of the Cr.P.C. for their pre-arrest bail before the learned trial Court are stand allowed. The appellants- (1) Jairam S/o Shankarrao Tale and (2) Mira W/o Jairam Tale, in Criminal Appeal No. 190 of 2019 as well as appellant- Savita W/o Gajanan Ghume, in Criminal Appeal No. 209 of 2019 be released on bail, in the event of their arrest, in connection with Crime No. 23 of 2019 registered at Kandhar Police Station, Ta. Kandhar, District Nanded, for the offence punishable under Sections 324, 143,

147, 149, 323, 504 and 506 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 witness. The appellants/applicants shall attend the Kandhar 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.

19. The present Criminal Appeals stand disposed of in above terms. No order as to costs.

[K. K. SONAWANE]
JUDGE

MTK.
