

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

CRIMINAL APPEAL NO. 228 OF 2019

Ratnakala Martandrao Mohite,
Age: 55 years, Occu. Service as Administrative
Officer, Health and Family Welfare
Training Center, CIDCO, Aurangabad.

...APPELLANT
(Ori. Accused)

VERSUS

1. The State of Maharashtra,
Through the Investigation Officer,
Police Station, Vedant Nagar,
Tq. & Dist. Aurangabad.

2. Rekha Govardhan Gaikwad,
Age: 50 years, Occu. Service as
Epidemiologist, Class-I, Health
and Family Welfare Training
Center, Aurangabad.

...RESPONDENTS
(Respdt. No. 2 Ori. Informant)

...

Mr. S.S. Tope, Advocate for appellant
Smt. A.V. Gondhalekar, APP for respondent No. 1-State
Mr. S.G. Magre, Advocate for respondent No. 2

...
WITH

CRIMINAL APPEAL NO. 267 OF 2019

Govind Pandit Chaudhary,
Age: 43 years, Occu. Govt. Service
R/o: Lamkani Tq. & Dist. Dhule

...APPELLANT
(Ori. Accused)

VERSUS

1. The State of Maharashtra,
Through Police Station, Vedant Nagar,
Aurangabad.

2. Dr. Smt. Rekha Govardhan Gaikwad,
Age: Major, Occ- Doctor,
R/o: V-7, Sahaydri Hills,
Garkheda, Parisar, Aurangabad

...RESPONDENTS
(Respdt. No. 2 Ori. Informant)

...
 Mr. Jagdish V. Deshpande, Advocate for appellant
 Smt. A.V. Gondhalekar, APP for respondent No. 1-State
 Mr. U.L. Telgaonkar, Advocate for respondent No. 2
 ...

WITH

CRIMINAL APPEAL NO. 268 OF 2019

Dr. Swapnil S/o Vishnu Lale,
 Age: 51 years, Occ: Service
 R/o: Mali Nagar, Taluka Malshirash
 District Solapur
 At present r/o Pride-enigma,
 Sutgirni Chowk, Aurangabad

...APPELLANT
 (Ori. Accused)

VERSUS

1. The State of Maharashtra
2. Dr. Rekha Govardhan Gaikwad,
 Age: 48 years, Occ- Service,
 R/o: V-7, Sahaydri Hills,
 Garkheda, Parisar, Jawhar Nagar,
 Aurangabad

...RESPONDENTS
 (Respdt. No. 2 Ori. Informant)

...
 Mr. N. S. Ghanekar, Advocate for appellant
 Smt. A.V. Gondhalekar, APP for respondent No. 1-State
 Mr. U.L. Telgaonkar, Advocate for respondent No. 2
 ...

CORAM : K.K. SONAWANE, J.

RESERVED ON : 26th MARCH, 2019.

PRONOUNCED ON : 05th APRIL, 2019.

JUDGMENT :-

1. Heard. **Admit.** These matters are taken up for its finality on merit with the consent of both sides.

2. The points of controversy in all these appeals are primarily centered on the question of pre-arrest bail of the appellants by exercising powers under Section 438 of the Code of Criminal Procedure (for short "Cr.P.C."), therefore, all these allied appeals are dealt with together for its adjudication on merit, simultaneously, by this common Judgment.

3. The appellants preferred present appeals by resorting to remedy under section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and agitated the validity as well as propriety of the impugned order passed by learned Additional Sessions Judge/Special Judge, Aurangabad in Criminal Bail Application Nos. 461, 485 and 480 of 2019 respectively, rebuffing the relief of pre-arrest bail under Section 438 of the Cr.P.C. to the appellants, in connection with Crime No. 40 of 2019 registered with Vedant Nagar Police Station, Aurangabad for the offence punishable under Sections 506 and 509 read with Section 34 of the Indian Penal Code (for short "IPC") and section 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "Act of 1989" for the sake or brevity).

4. The allegations nurtured on behalf of prosecution against the appellants, sans unnecessary details, are that, the first informant Dr. Rekha Govardhan Gaikwad, resident of

Aurangabad, on 28-02-2019 approached to the Police of Vedantnagar Police Station and lodged report that she is Class-I Officer as Epidemiologist, attached to Health and Family Welfare Training Center, Aurangabad since June, 2016. It has been alleged that she is from "*Mahar*" community, and being a member of Scheduled Caste, her Superior i.e. Principal Dr. Govind Chaudhary (one of the appellants) used to maltreat her mentally and economically since she assumed charge in the office at Aurangabad. He also used to torture other staff members belonging to Scheduled Caste community. The appellant/accused Dr. Govind Chaudhary did not allow first informant Dr. Rekha Gaikwad to avail facilities meant for Class-I, Officer including facility of office Cabin etc. It has been alleged that after about a month first informant on her own accord, started sitting in the Cabin available for her post in the Office. But, the appellant Dr. Govind Chaudhary put monitor of CCTV Camera of her Cabin in his room, which cause disturbance to her privacy. The first informant Dr. Rekha Gaikwad further cast allegation that the appellant Dr. Chaudhary used to behave indecently by calling her in his Cabin without any cause. She was not allowed to avail benefit of staff car or travelling allowance etc. According to first informant-complainant, she was being tortured by the appellants only because she is a member of Scheduled Caste.

5. The first informant - complainant ventilated the grievance against the appellant Smt. Ratnakala Mohite that she was the Administrative Officer in the office of Health and Family Welfare Training Center. The appellant - Smt. Mohite hatched the conspiracy with appellant Dr. Govind Chaudhary and Dr. Lale to sack the complainant from Government service only because she is belonging from "*Mahar*" community. The appellant- Smt. Mohite used to torture her mentally by avoiding to get her leave approved at the earliest from the Superior as well as avoid to pay the salary of leave period and other allowances within stipulated period.

6. The first informant - complainant also cast aspersion against appellant Dr. Lale. It has been alleged that on 10-01-2019 first informant-complainant and her husband had been to the Office of Deputy Director I.e. Dr. Lale for recording her statement in the enquiry of her complaint filed against appellant - Dr. Govind Chaudhary. But, it was informed that the enquiry of her complaint was postponed. When she asked the reason, the appellant Dr. Lale started reprimanding her. He threatened the first informant-complainant not to pressurize him in the matter of enquiry of her complaint against Dr. Govind Chaudhary. The appellant Dr. Lale sarcastically passed lewd and obscene comment towards the complainant. The appellant - Dr. Lale threatened and intimidated her for not pursuing the enquiry

against Dr. Govind Chaudhary otherwise she would have to face dire consequences. The first informant-complainant became mentally disturbed and frightened after hearing the disgusting dialogue on the part of appellant-accused- Dr. Lale. Therefore, on 28-02-2019 first informant-complainant approached to the Police of Vedantnagar Police Station and filed report.

7. Pursuant to the First Information Report (FIR), the concerned PSO registered the crime No. 40 of 2019 under Sections 506 and 509 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 investigation was entrusted to the Senior Police Personnel ACP Shri Bhapkar. The Investigating Officer (IO) visited to the spot of incident, drawn the panchnama of scene of occurrence. He recorded statements of witnesses acquainted with the facts of the case. He collected relevant document of caste Certificate of the first informant-complainant. The appellants are figured in the FIR being culprits. Therefore, apprehending the arrest at the hands of police for the sake of investigation, the appellant approached to the concerned Court of Additional Sessions Judge/Special Judge, Aurangabad and filed the applications for their pre-arrest bail in this Crime. The learned Special Judge considered the circumstances on record and arrived at the conclusion that there is *prima facie* case made out to attract the provisions of the Act of 1989 and in view of

statutory bar under section 18-A of the Act of 1989, the powers under section 438 of the Cr.P.C. would not be exercised in favour of appellants-accused. In the result, learned Sessions Judge rejected the applications filed on behalf of appellants for pre-arrest bail and passed the impugned order, the validity and propriety of which is challenged in the present appeals.

8. Learned counsel appearing for respective appellants scathingly assailed that the impugned order passed by the learned trial Court is erroneous, illegal and not within the purview of law. The appellants did not commit any crime as alleged by the prosecution. But, they all are falsely implicated in this case with purported motive. According to learned counsels the present complaint is the fallout of Office politics and no such incident occurred as verbalized by the complainant in the FIR.

9. Mr. Tope leaned counsel appearing for the appellant Smt. Ratnakala Mohite submitted that the appellant was the Administrative Officer attached to the Health and Family Welfare Training Center, Aurangabad. The appellant has no concerned at all with alleged complaint. She promptly dealt with the leave applications, salary of leave period etc. without any delay. She was not the sanctioning authority and the documents are required to be forwarded to the Deputy Director for approval of leave etc. There was no personal grudge against respondent

No.2. Learned counsel Shri Tope further criticized that the FIR did not disclose ingredients of offence under section 3(1)(r)(s) of the Act of 1989. There is no impediment of statutory bar as prescribed under sections 18 and 18A of the Act of 1989 to entertain the present application. The appellant is the resident of Aurangabad and Government Servant. She is ready to abide condition, if any, imposed for her bail. Mr. Tope, learned counsel relied on the expositions of law delineated by this Hon'ble Court in the case of ***Kiran Madhukar Ingle Vs. The State of Maharashtra and another in Criminal Appeal No. 787 of 2018 dated 26th February, 2019***. He also relied upon the legal guidelines delineated by the Apex Court in the case of ***Vilas Pandurang Pawar and another Vs. State of Maharashtra reported in 2012 Cri.L.J. 4520***, in which, it has been held that Section 18 of the Act of 1989 creates bar for invoking Section 438 of the Cr.P.C. However, duty is cast on the Court to verify the averments in the complaint to find out whether offence under atrocities Act has been *prima facie* made out or not? He also kept reliance on the judicial precedents in the case of ***Atendra Singh Rawat Vs. State of Madhya Pradesh. (Gwalior Bench) Criminal Appeal No. 7295 of 2018 decided on 11-10-2018***, and in the case of ***Baliram Iranna Yerpulwar Vs. The State of Maharashtra in Criminal Application No. 5682 of 2015 decided on 17th November, 2015***.

10. Mr. Deshpande, learned counsel for appellant - Dr. Govind Chaudhary stepped into the shoe of learned Counsel Mr. Tope and contends that the entire allegations against present appellant in the FIR are false, baseless and fabricated one. No such incident, as alleged in FIR on behalf of first informant/complainant, has been ever occurred. Learned counsel explained that present complaint is filed with ulterior motive following office politics. There was a complaint against husband of the first informant, who had an involvement in the scam of drugs and medicine. The present appellant was the Chairman of the Inquiry Committee and they held guilty the husband of complainant under such scam. The Committee also recommended suspension of husband of the complainant. Taking umbrage of the same, first informant / complainant attempted to embroil the appellant by making false allegations in this case. Mr. Deshpande, learned counsel further harped on the circumstances that the allegations reflect from the FIR are not sufficient to constitute the offence under Atrocities Act, therefore, there would not be hindrance of statutory bar against the appellant for entertaining present application for anticipatory bail under section 438 of the Cr.P.C. The appellant is the Principal of Health and Family Welfare Training Center, Nashik and having good reputation in the field. He is ready to abide conditions, if any, imposed for his bail. In case, he has been arrested in this

crime, it would tarnish his reputation. Therefore, he urged to entertain the application of anticipatory bail in favour of the appellant. He relied upon the judicial guideline delineated by their Lordships in the case of ***Pradip Biswas Vs. State of West Bengal in CRM No. 10431 of 2018 dated 26th February, 2019.***

11. Mr. Ghanekar, learned counsel for appellant Dr. Lale also advanced the argument in similar fashion and submitted that the appellant has no concern at all with the alleged crime. The first informant -complainant implicated the appellant falsely with *malafide* intention to spoil service career of the appellant. There are no allegations in the FIR to make out the case under the Atrocities Act. In view of nature of subject-matter, there is no necessity of custodial interrogation of appellant for the sake of investigation. The allegations nurtured against appellant, all are due to office politics. The appellant is the Class-I officer discharging duty as Deputy Director since the year 2016. There are no complaints uptill this date about discrimination on the caste against him. In contrast, he has an association with well-known members of Scheduled Caste community. Mr. Ghanekar learned counsel also relied upon the judicial precedents in the cases of ***Sanjay Vishnu Mojar and others Vs. State of Maharashtra and others*** reported in ***2005(3) LJSOFT(URC) 9, Nikhil Vasantrao Chandgude Vs. State of Maharashtra*** reported in ***2017(9) LJSOFT 265, Madan Balu More and***

others Vs. State of Maharashtra reported in **2006(2) LJSOFT(URC)70, Paparaju R. Murthy Vs. State of Maharashtra** reported in **2006(5) LJSOFT (URC) 3, Suresh S/o Laxamanrao Giram Vs. State of Maharashtra and another** reported in **2014(12)LJSOFT 352, Baban S/o Tabaji Zaware and another Vs. State of Maharashtra** reported in **2015(11)LJSOFT 32, Balu Tabaji Kagane Vs. State of Maharashtra** reported in **2017(9) LJSOFT 268, Baliram S/o Iranna Yerpulwar Vs. State of Maharashtra** reported in **2016(1) LJSOFT, 24, Sunil Dashrath Palave Vs. State of Maharashtra** reported in **2017 (9) LJSOFT 267, Pravin Shrimant Bhutekar Vs. State of Maharashtra** reported in **LEX (Bom) 2010 2 24, Shri P.B. Shah and others Vs. Shri Prabhu Mahadeo Kodate and others** reported in **2008 All MR (Cri) 2520, Mukesh Kumar Saini Vs. State (Delhi Administration)** reported in **2002 ALL MR (Cri) Journal, 41, Shashikant Ramhari Tambe and others Vs. State of Maharashtra** reported in **2008 All MR(Cri.) 2132, Shri Mahesh Sakharam Patole and ors. Vs. State of Maharashtra** reported in **2009 ALL MR (Cri) 1601, Sambhaji S/o Wamanrao Suryawanshi Vs. The State of Maharashtra and another** reported in **2013 All MR (Cri) 2412 and Dinesh S/o Gunderao Sasturkar Vs. The State of Maharashtra and others** reported in **2013 All MR (Cri.) 2310.**

12. Per contra, learned APP Smt. Gondhalekar as well as learned counsel Mr. Magare and Mr. Telgaonkar for respondent No. 2 in respective matters vociferously opposed the contentions propounded on behalf of appellants and submits that the appellants maltreated and tortured the complainant on account of her caste. She was "intentionally insulted" and "humiliated" by the appellants on her caste within a public view. The first informant-complainant being a member of Scheduled Caste Community expressed her ordeals during the course of her employment in the FIR. Her Superior i.e. appellant Dr. Govind Chaudhary mentally and economically harassed her, being a member of Scheduled Caste. The appellant Smt. Mohite also one of the member of conspiracy with appellant Dr. Govind Chaudhary and Dr. Lale, who were bent upon to sack the complainant from Government service. The FIR disclosed the series of events occurred with the first informant/complainant about her insult and humiliation, intentionally on her caste within public view. According to learned APP and learned counsel for respondent No.2-original complainant, the contents of FIR *prima facie* demonstrate the circumstances to make out the charges against the appellants under the Act of 1989. The learned APP and learned counsel for respondent No. 2 drawn attention of this Court towards the supplementary statement of the complainant, which was recorded by the IO during the course of investigation

into the crime. According to Mr. Telgaonkar and Mr. Magare, learned counsel, supplementary statement of the first informant described in detail the entire episode occurred with the first informant in the Office. The complainant makes a reference in the FIR about sexual harassment as well as casteist abuses, humiliation and intentionally insult her by the appellant on her caste in the Office. Therefore, circumstances indicate that offence under section 3(1)(r)(s) and 3(1)(w)(ii) of the Act of 1989 are made out against each of the appellants. Consequently, in view of statutory bar engrafted under Section 18 and 18A of the Act of 1989, the applications for relief of pre-arrest bail under section 438 of Cr.P.C. cannot be entertained. Hence, interference in the impugned order passed by the learned trial Court at the instance of appellants is totally unwarranted and unjustifiable in this case. The learned APP produced the relevant documents of investigation of the crime on record for perusal. So also, learned counsel for respondent No. 2 placed on record the document of affidavit-in-reply of respondent No. 2.

Learned counsel for respondents relied upon the judicial precedents in the cases of ***Vilas Pandurang Pawar and another Vs. State of Maharashtra and others*** reported in ***AIR 2012 Supreme Court, 3316*** and ***Saliquddin Ziyauddin Chishty Vs. State of Maharashtra*** reported in ***2018 DGLS (Bom) 1102***.

13. I have given anxious consideration to the rival submissions advanced on behalf of both sides. At the inception, I find it necessary to discuss the scope and ambit of applicability of Sections 18 as well as 18A of the Act of 1989. This Court in the case of Kiran Ingle referred supra dealt with issue of applicability of Section 18 of the Act of 1989 elaborately and held that the provisions of Section 18 as well as newly amended Section 18A of the Act of 1989 create bar for exercising jurisdiction under Section 438 of the Cr.P.C. However, it would not preclude the concerned Court from examination of allegations made in the FIR and its face value to determine whether prima facie case is made out or not? In paragraph No. 13 and 15 of the aforesaid Kiran Ingle's case this Court made observations, which read 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.

14. It has also been observed that provisions of Section 18A newly incorporated in the Act of 1989, is the reproduction of earlier provisions of Section 18 of the Act of 1989. The newly amended provision of Section 18A is inserted as clarifactory proviso giving emphasis on the procedure prescribed under Cr.P.C. for registration of FIR without any preliminary enquiry as well as right of Investigating Officer to arrest without approval from any authority, if he has reason to suspect commission of crime in terms of section 41 of the Code. It is also significant to note that while incorporating the provisions contemplated under Section 18A, in the Act of 1989, the Legislature did not consider it necessary to repeal the earlier provisions of Section 18, which indicate that both the provisions are required to be read harmoniously and consonantly. Therefore, the operation of Section 18A of the Act of 1989 has not taken away the limited jurisdiction of the Court to examine whether uncontraverted

averments in the FIR disclose ingredients of any offence under the Act of 1989. In the case of **Vilas Pandurang Pawar** referred *supra*, Their Lordships of Hon'ble Apex Court reiterated the similar principle of law and observed that no Court shall entertain the application for anticipatory bail in the offence registered under the provisions of the Act of 1989, unless it *prima facie* find that such offence is made out. Similar principles/rule also delineated by this Courts of Law in the aforesaid case laws referred on behalf of appellants. In such circumstances, it is evident 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 into FIR as to whether *prima facie* case is made out by the complainant against appellants. Recently, the Division Bench of this Court (Coram : T. V. Nalawade and Manesh S. Patil, JJ.), in Criminal Appeal No. 194 of 2019 decided on 03-04-2019, upheld the view expressed in the Criminal Appeal No. 787 of 2018 (**Kiran S/o. Madhukar Ingle Versus The State of Maharashtra and another**) and observed that the application under Section 438 of Cr.P.C. needs to be considered for ascertaining, whether there is material to make out *prima facie* case for offence punishable under the Act, 1989.

15. In the matter in hand, 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.”

16. After perusal of the FIR lodged against each of 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 make it 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.

17. In the instant case, the first informant-complainant in her FIR makes reference of several instances about 'insult' or 'humiliation' in the Office while discharging Official functions. It has been alleged that the appellants mentally and economically tortured and harassed her only for reason that she is from "Mahar" community, a member of Scheduled Caste category. She has not unfurled in her FIR the mode and manner, in which, the appellants "intentional insults" or "intimidate" with "intent" to humiliate her being a member of Scheduled Castes. The allegations about torture, maltreatment in the office may be owing to office politics. But, after perusal of FIR, it cannot be perceived that there was intentional insult or intimidation with intent to humiliate her being member of scheduled caste. It would unsafe to draw adverse inference that maltreatment to the first informant/complainant was only for the reason that she is belonging from "Mahar" community. It seems from the recitals of FIR that whatever allegations nurtured against the appellants, all appear to be rests on her own perception. The language and tenor of the FIR reflects that there was hostile atmosphere for the first informant-complainant in the office. Pursuant to unfriendly environment in the office, there may be an possibility that the first informant might have conceived the feelings of discrimination on her caste against the appellants. Be that as it

may, there are no specific averments in the FIR to make out a case against appellants under the Act of 1989. Therefore, on the basis of such omnibus sweeping and stray allegations, it cannot be determined that the basic ingredients of section 3(1)(r)(s) are constituted in this case against the appellants.

18. Learned APP Smt. Gondhalekar for the respondent-State and learned counsel appearing for respondent No. 2-original complainant - first informant drawn the attention of this Court towards supplementary statement recorded by IO during the course of investigation into the matter. They attempted to explain that the first informant has verbalized in detail the events of heinous and disgusting overtact of appellants in her supplementary statement, from which, it can be held that there are incriminating circumstances on record sufficient to constitute offences under the provisions of Act of 1989 against the appellants.

19. Now, the question would arise as to whether supplementary statement recorded by the IO, during the course of investigation can be considered as a part and parcel of the FIR to ascertain the maintainability of the application filed under Section 438 of Cr.P.C. for relief of pre-arrest bail of the appellants. It is to be borne in mind that the law does not permit to reject the application for anticipatory bail merely because the case has been

registered against the appellants under Section 3(1)(r)(s) of the Act 1989 or allegations cast for offence under Section 3(1)(w)(ii) of the Act of 1989 as per supplementary statement of first informant-complainant. But, it is essential for this Court to examine whether appellants are fit person to be treated as an accused of the Crime registered against them under the Act of 1989. It would be reiterated that provision of Sections 18 or 18A of the Act of 1989 does not bar judicial scrutiny of the accusation made in the complaint against appellants. But, certainly to what extent Court would be justified to examine material on record to ascertain *prima facie* case against them, is the significant issue to be ascertained in this matter.

20. At this juncture, it is to be noted that the Full Bench of Rajasthan High Court in the case of **Virendra Singh Vs. State of Rajasthan** reported in **2000 Cri.L.J. 2899** had an occasion to deal with the present issue extensively. In paragraph No. 18, it has been observed that :

“18. if a person is even alleged of accusation of committing an offence under the S.C. S.T. Act of 1989 the intention of Section 18 is clearly to debar him from seeking the remedy of anticipatory bail and it is only in the circumstances where there is absolutely no material to infer as to why Sec.3 has been applied to implicate a person for an offence under the Act of 1989 the Courts would be justified in a very limited sphere to examine whether the application can be rejected on the ground of its maintainability. What is intended to be emphasized is that while dealing with an application for anticipatory bail, the Courts would be justified in merely examining as to whether there is at all an accusation against a person for registering a case under Sec. 3 of the Act of 1989 and once the

ingredients of the offence are available in the FIR or the complaint, the Courts would not be justified in entering into a further inquiry by summoning the case diary or any other material as to whether the allegations are true or false or whether there is any pre-ponderance of probability of commission of such an offence. Such an exercise in our view is intended to put to a complete bar against entertainment of application of anticipatory bail which is unambiguously laid down under Sec. 18 of the Act of 1989, which is apparent from the perusal of the section itself and thus the Court at the most would be required to evaluate the FIR itself with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of the ingredients constituting the alleged offence. In our opinion, the Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegation made in the FIR or the complaint by calling for the case diary, charge sheet or any other material gathered at the time of investigation but if the allegations in the FIR or the complaint even if they are taken at their face value are accepted in their entirety do not constitute the offence alleged, it is only in those miniscule number of cases, the Courts would be justified in entertaining the application, not because it is maintainable but clearly because the Act would be inapplicable in the facts and circumstances of that particular case. Thus the application for anticipatory bail can be entertained only on the ground of inapplicability of the Act of 1989 due to the facts of the case which will have to be gathered only from the FIR and not beyond that because once it is gathered from the FIR that the applicant is an accused of committing an offence laid down under Sec.3 of the Act of 1989, the bar of Sec. 18 would instantly operate against the person who has been made an accused of the offence under the Act of 1989. To put it differently, once it is apparent from the FIR that an offence under the Act of 1989 is even alleged, the Courts would not be justified at all in weighing or scrutinising the preponderance of the probability of commission of the offence by the accused, but if from the FIR itself the ingredients of offence as laid down under Sec.3 of the Act itself is found to be missing, the bar created by Sec.18 would not be allowed to operate against an accused and only in that event his application for anticipatory bail would be dealt with by the concerned Court to determine whether the Act of 1989 can be said to be rightly applicable against the accused and not to enter into further enquiry into the matter so as to determine whether the allegations levelled against the accused in the FIR are true or false and there would be no justification to enter into the matter further in order to examine whether the

allegations levelled against the accused are even prima facie correct or incorrect.”

(Emphasis supplied)

21. In the light of aforesaid judicial authority, it is evident that application under section 438 of the Cr.P.C. for the relief of pre-arrest bail can be entertained only on the ground of inapplicability of provisions of the Act of 1989 and it would be verifiable only after perusal of recital of the FIR or complaint itself and not beyond that. It is the rule of law that once it is gathered from the FIR that the appellants are the accused of committing offence as prescribed under Section 3(1)(r)(s) or (w) (ii) of the Act 1989, the bar under Section 18A of the Act of 1989 would instantly come into operation against them. In contrast, if the contents of FIR do not constitute ingredients of offence under Act of 1989, there would not be any embargo of statutory bar engrafted under Section 18 or 18A of the Act of 1989. It is not permissible for the Court to enter into roving enquiry in regard to sustainability of accusation nurtured on behalf of complainant. Moreover, further enquiry by summoning the case diary or other material of investigation to ascertain genuineness and truthfulness of the allegations made in the FIR is also prohibited under the law.

22. Undisputedly, the supplementary statement recorded later on after registration of crime would be the part of

investigation of the crime for collecting evidence against the appellants. It is an bare statement under Section 162 of the Cr.P.C. and does not have any evidential value at par with FIR being a former statement of witness as envisaged under Section 157 of the Indian Evidence Act. It cannot be considered as a part and parcel of the FIR to determine the maintainability of application filed under Section 438 of the Cr.P.C. for relief of pre-arrest bail. The Court cannot embark upon the inquiry to ascertain the reliability or genuineness of allegations by appreciating the aspersion cast in the supplementary statement.

23. Moreover, in the matter in hand, the alleged FIR came to be lodged on 28-02-2019 and the so-called supplementary statement of the first informant was recorded after efflux of colossal period on 23-03-2019. It is to be noted that the said supplementary statement is recorded when the present proceedings of appeals are pending before this Court for hearing. The supplementary statement recorded at belated stage was not available before the concerned trial Court for appreciation into the matter. Whatever that may be, but it is not permissible under law to appreciate the allegations made during the course of investigation by recording supplementary statement of the first informant. Therefore, at this stage, it would not advance the case of the prosecution for any adverse inference against the appellants about the maintainability of application for their pre-

arrest bail under Section 438 of Cr.P.C.

24. Taking into consideration over-all factual score of the matter, I am of the opinion that in spite of bar under Sections 18 and 18A 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 against the present appellants. There are no any circumstances incriminating in nature on record to point out 'intentional insult' or 'intimidation' with intent to humiliate the complainant within public view by the appellants. In contrast, all allegations nurtured on behalf of first informant are vague, cryptic and slender in nature. The sweeping and omnibus allegations made in the FIR, all appear to be based on own perception of first informant-complainant and it would not match with the very ingredients of Section 3(1)(r) and (s) of the Act of 1989, to rebuff the relief of pre-arrest bail as prayed on behalf of appellants.

25. In regard to the offences registered under the IPC against the appellants such as Sections 506 and 509, both are bailable in nature. Therefore, there would not be any custodial interrogation of the appellants in this crime for the sake of investigation. There is no possibility of tampering with the evidence of prosecution witnesses. The appellants are the high Officials

discharging their function in the Government Office. The learned trial Court did not appreciate the legal provisions in its proper perspective meant for statutory bar under Sections 18 and 18A of the Act of 1989. The learned Sessions Judge / Special Judge unwittingly overlooked or glossed over the serious pitfalls into the matter. The learned trial Court adopted the superficial approach and rejected the application for anticipatory bail of the appellants. In such peculiar circumstances, as referred above, there is no impediment to allow the present appeals for the relief of anticipatory bail in favour of the appellants. Hence, all the appeals deserve to be allowed.

26. Accordingly, the appeals stand allowed. The impugned orders rejecting the bail applications, dated 05-03-2019 and 13-03-2019 respectively, passed by the learned Additional Sessions Judge, (Special Judge SC & ST) Aurangabad, in Criminal Bail Applications No. 461, 485 and 480 of 2019 filed by appellants are hereby quashed and set aside. The applications of the applicants - appellants filed under section 438 of Cr.P.C. for their pre-arrest bail before the learned Sessions Court are hereby granted. The appellant, namely, Smt. Ratnakala Martandrao Mohite in Criminal Appeal No. 228 of 2019, the appellant- Dr. Govind Pandit Chaudhary in Criminal Appeal No. 267 of 2019 and the appellant – Swapnil S/o Vishnu Lale in Criminal Appeal No. 268 of 2019 be released on bail, in the event

of their arrest, in connection with Crime No. 40 of 2019 registered with Vedant Nagar Police Station, Aurangabad for the offence punishable under Sections 506, 509 read with section 34 of the IPC and Section 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 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 indulged, directly or indirectly, in any kind of activities of tampering with the evidence of prosecution witness. The applicants/appellants shall co-operate the Investigating Officer for the sake of investigation into the crime. Inform the concerned Investigating Officer accordingly.

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

[K. K. SONAWANE]
JUDGE

MTK
