

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

CRIMINAL APPEAL NO. 276 OF 2019

1. Avinash Prabhakar Chandra,
Age: 32 years, Occu. Service,
R/o : Naigaon, Tq. & Dist. Dhule
2. Jitendra Dattatray Lonari,
Age: 33 years, Occu. Service,
R/o: Ekta Nagar, Biladi Road,
Plot No. 9, Deopur, Dhule.
3. Ganesh Dilip Patil,
Age: 32 years, Occu. Service,
R/o: Vaibhav Nagar, Dhule.
4. Balu Dhondiba Shelekar,
Age: 31 Years, occ. Service,
R/o: SRPF Camp, Building No. H-3,
Room No. 5, 500 Quarters,
Sakri Road, Dhule

...APPELLANTS

VERSUS

1. The State of Maharashtra,
Through P.I. Dhule Taluka Police Station,
Dhule
2. Vaishali Hiralal Sonawane,
Age: 26 years, Occu.: Household,
R/o: SRPF, 500 Quarters,
Building No. N-2 Room No. 4,
Mahindra Shivar, Dhule,
At present : C/o Dhrupadabai
Chandrakant Pawar, Sidharth Nagar,
Chittod Road, Dhule.

...RESPONDENTS

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Mr. N.L. Chaudhari, Advocate for appellants
Mr. S.N. Kendre, APP for respondent No. 1-State
Mr. A.D. Sonar, Advocate for respondent No. 2

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CORAM : K.K. SONAWANE, J.

**RESERVED ON : 22nd APRIL, 2019.
PRONOUNCED ON : 30th 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. 15 of 2019 registered with Dhule Taluka Police Station under Sections 323, 504, 506 and 509 of the Indian Penal Code (IPC) and Section 3(1)(w)(i)(ii) 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 Act of 1989.

3. The prosecution case in short compass is that, on 30-01-2019 first informant - Vaishali Hiralal Sonwane approached to the Dhule Taluka Police Station and ventilated the grievance that she is belonging from Adiwasi – *Bhil* community and residing with her husband and other family members in the campus of SRPF, 500 Quarters, Building No. N-2 Room No. 4 located within the vicinity of village Mahindale, Dhule. Her husband was on Bandobast duty in Gadchiroli area since 10-05-2018. It has been alleged that on the day of incident i.e. on 17-05-2018, in the wee hours of night at about 10.00 to 10.30 p.m. when the first informant Vaishali Hiralal Sonawane, her daughter Rudraksha as well as sister-in-

law Mukta Babu Sonawane were at home in SRPF Quarters, that time appellant-Ganesh Patil visited her for enquiry as to whether some one else came to her house. The first informant-Vaishali Sonawane disclosed him that no one else visited to her house. She replied in negative, thereupon the appellant-Ganesh Patil proceeded to frisk the house of complainant. But, all his efforts did not evoke result. There was altercation in between the first informant and appellant - Ganesh Patil. He took the cellphone of first informant forcibly and went away. In the following morning, appellant -Jitendra Lonari informed that the Superior Officer Mr. Namdeo Pawar called her for enquiry. Accordingly, first informant-complainant and her mother proceeded towards the office of Superior Officer Mr. Pawar. It has been alleged that when first informant-complainant and her mother were en-route to office of Superior Officer Mr. Namdeo Pawar, that time appellants accosted and reprimanded her for objectionable behaviour on her part. They indulged in conversation with the first informant in disgusting and derogatory manner. They cast aspersion on the first informant-complainant that the person by name Sunny Gawali visited her house in the wee hours of night. The appellants hurled castiest abuses and humiliated her within a public view. They also attempted to outrage her modesty by making obscene gestures. Eventually, the first informant Vaishali Sonawane rushed to the Police Station and filed the report.

4. Pursuant to FIR of complainant Vaishali Sonwane, Police of Dhule Taluka Police Station registered the Crime No. 15 of 2019 for the offence punishable under Sections 323, 504, 506 and 509 of the IPC and Section 3(1)(w)(i)(ii) of 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, Dhule, for their pre-arrest bail bearing Criminal Bail Application No. 119 of 2019 under Section 438 of the Code of Criminal Procedure, 1973 (Cr.P.C.). But, learned Additional Sessions Judge found reluctant to nod in favour of applicants-appellants. Learned trial Court held that in view of statutory bar under Sections 18 and 18-A of the Act of 1989, Sessions Court has no jurisdiction to entertain the application for anticipatory bail. 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. Chaudhari, 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 for complainant- first informant, there is inordinate delay in lodging the FIR. There is no direct or indirect evidence against present appellants in regard to castiest abuses. Appellant No. 1 belongs

to Scheduled Caste and offence under Act of 1989 cannot be registered against him. The complainant used to give threat to implicate appellants by filing false complaint under the Atrocities Act. There is dispute between the first informant-complaint and her husband. The appellants are the fellow SRPF personnel of her husband. The complainant without reasonable cause preferred the present complaint, which is false baseless and concocted one. Learned counsel explained the circumstances in detail and submits that the allegations would not attract the provisions of the Act of 1989. Therefore, he requested to entertain the appeal and grant the relief of pre-arrest bail to the appellants in this case. The learned counsel for appellants in support of the contentions placed reliance on the judgment of this Court in the case of ***Nitin Sampatrao Maske and another Vs. The State of Maharashtra and another in Criminal Appeal No. 9 of 2019, dated 7th March, 2019.***

6. Learned APP for respondent No. 1 and learned counsel appearing on behalf of respondent No. 2 vociferously raised objections and submit that Section 18A of the Act of 1989 put statutory bar for exercising the powers under Section 438 of the Cr.P.C. by the Court. The appellants abused the complainant on her caste within a public view. The appellants also intentionally touched the complainant by holding her hand with an ill-intention. The circumstances reflect from the FIR are sufficient to

draw inference that appellants committed an offence under the Act of 1989. The appellants had an knowledge that complainant is from "Bhil" community recognized as Scheduled Tribe. Therefore, there is no propriety to grant relief of anticipatory bail under Section 438 of the Cr.P.C. Respondent No. 2 also filed affidavit-in-reply on record in support of her contentions. He also placed reliance on the judgment of the Supreme Court in the case of **Manju Devi Vs Onkarjit Singh Ahluwalia @ Omkarjeet Singh and others reported in 2017 DGLS (SC) 335 : 2017 AIR (SC) 1583.**

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 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)(ii) 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 :-

(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;

(ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.”

9. Provisions of Section 3 of the Act of 1989 makes it mandatory on the part of complainant to show *prima facie* in the FIR that accused is not the member of Scheduled Castes or Scheduled Tribes. Moreover, the alleged humiliation by way of intentional touching to her was under knowledge that she is

belonging from Scheduled Caste or Scheduled Tribe category and also the act of touching to her was with sexual intent. The opening sentence of Section 3(1) of the Act of 1989 itself shows that, "*whoever not being a member of Scheduled Castes or Scheduled Tribes*". It means that there must be *prima facie* affirmation or say in the FIR-complaint that the accused is not the member of Scheduled Castes or Scheduled Tribes. In addition, it must be clear in the FIR that accused were aware or they had an knowledge that complainant belongs to Scheduled Castes or Scheduled Tribes category.

10. In the present FIR, absolutely there are no averments to the effect that appellants-applicants are belonging from higher caste or atleast that they are not a member of Scheduled Castes or Scheduled Tribes. There are also no whisper in the FIR/complaint that appellants had an knowledge that complainant was from Scheduled Castes or Scheduled Tribes community. It is true that there are allegations that appellants hurled abuses to the complainant on caste by saying "*Bhil*". But, bare uttering word "*Bhil*" would not sufficient to draw inference that appellants had an knowledge or they were aware about the caste of complainant, and therefore, they abused the complainant in the name of her caste to insult or humiliate her within public view. The possibility of uttering word "*Bhil*" during the course of hot exchange of words may be to increase gravity of abuses and

make it more filthily. All these circumstances being prime and basic ingredients of Section 3(1)(w)(i)(ii) of the Act of 1989 and the absence of the same will have a serious impact as to the allegations to constitute offence under Act of 1989.

11. In the matter-in-hand, as referred above, averments in regard to appellants that they are not the member of Scheduled Castes and Scheduled Tribes community or they are belonging from higher caste, are totally absent in the alleged FIR. In contrast, it reveals that appellant No. 1 is from Scheduled Caste category. He produce the relevant document of his caste on record. Therefore, the provisions of Act of 1989 do not attract against appellant No.1-Avinash Chandra in the present matter. Moreover, recitals of the FIR are silent to point out that the appellants had an knowledge or aware about the caste of complainant as she belongs to Scheduled Castes or Scheduled Tribes community. The abuses by uttering words "*Bhil*" may be towards act of abusing the complainant more filthily. Therefore, it cannot be said that allegations nurtured on behalf of complainant are sufficient to constitute the offence under the Act of 1989. In the result, statutory bar under Section 18 of the Act of 1989, would not set in operation to the facts and circumstances of the present case.

12. In regard to the allegations of assault, provocation or

criminal intimidation as envisaged under Sections 323, 504, 506 and 509 read with Section 34 of the IPC, I find that custodial interrogation of the appellants is not necessary for the sake of investigation. There is no recovery from the appellants nor there is any apprehension about absconding of the appellants. Therefore, there is no impediment to allow present appeal for the relief of anticipatory bail in favour of appellants-accused. Hence, appeal deserves to be allowed.

13. In sequel, the appeal stands allowed. The impugned order dated 16-02-2019 passed by learned Additional Sessions Judge, Dhule, in Criminal Bail Application No. 119 of 2019 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 is hereby allowed. The appellants - (1) Avinash Prabhakar Chandra, (2) Jitendra Dattatray Lonari (3) Ganesh Dilip Patil and (4) Balu Dhondiba Shelekar be released on bail in the event of their arrest in connection with Crime No. 15 of 2019 registered at Dhule Taluka Police Station, District Dhule for the offence punishable under Sections 323, 504, 506 and 509 of the IPC and Section 3(1)(w) (i)(ii) of the Act of 1989, on furnishing PR bond of Rs.20,000/- (Rupees Twenty 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 Dhule Taluka Police Station, District Dhule 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.

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

[K. K. SONAWANE]
JUDGE

MTK.