

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

CRIMINAL APPEAL NO. 333 OF 2019

1. Suryakant S/o Vitthalrao Shelke,
Age: 70 years, Occu. Agri & Social Worker,
 2. Pradip S/o Ramrao Surwase,
Age: 45 years, Occu. Private Service,
- Both R/o. Mahmadapur,
Tal. and Dist- Latur
- ...APPELLANTS

VERSUS

1. The State of Maharashtra
 2. Muktabai W/o Pundlik Bansode,
Age: 38 years, Occu.: Labour,
R/o.: Opp. Water Tank, Prakash Nagar,
Latur
- ...RESPONDENTS

...

Mr. Sachin S Panale, Advocate for appellants
Mr. K. D. Mundhe, APP for respondent No. 1-State
Mr. R.A. Tambe, Advocate for respondent No. 2

...

CORAM : K.K. SONAWANE, J.

**RESERVED ON : 24th 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. 20 of 2019 registered with Latur Rural Police Station, District Latur, for the offence punishable under Sections 354 and 294 read with Section 34 of the Indian Penal Code (IPC) and Section 3(1)(r)(s)(w)(y) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Hereinafter, for the sake or brevity it be referred as "Act of 1989"). 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, first informant- Muktabai Pundlik Bansode, resident of Latur, is belonging from Chambhar community. She has three children. She was residing separately from her husband since last ten years and eking livelihood by doing labour work. It has been alleged that on the day of incident i.e. on 30-01-2019, first informant - Muktabai Bansode, at about 11.00 a.m., had been to Fair Price Shop (Ration Shop) of the appellants-accused and demanded food grains. Meanwhile, elder son of the first informant, namely, Pravin, who was residing separately from her, arrived there. He asked owner of the Fair Price Shop not to give food grains on Ration Card to the first informant. It has been contended that her son - Pravin Bansode was suffering from mental disorder. Therefore, she did not indulge in exchange of words with son Pravin. The first informant requested shop owner to give food grains (ration) as per shares allotted to each of the card holders.

But, the appellants-accused refused to give ration to the complainant. There was altercation in between the first informant and accused, as she was insisting to give in writing the reasons for not providing the ration to her. In the altercation, appellants-accused hurled castiest abuses in filthy language to the first informant and attempted to insult and humiliate her within public view as well as outrage her modesty. Thereafter, first informant approached to the Latur Rural Police Station and filed the report.

4. Pursuant to FIR of complainant - Muktabai Bansode, Police of Latur Rural Police Station registered Crime bearing No. 20 of 2019, for the offence punishable under Sections 354 and 294 read with Section 34 of IPC and Section 3(1)(xiv)(xv)(iii) of Act of 1989, and set the penal law in motion. The appellants, apprehending their arrest in the present crime, filed applications before the learned Additional Sessions Judge, Latur, for their pre-arrest bail bearing Criminal Miscellaneous Applications No. 155 and 154 of 2019 under Section 438 of the Code of Criminal Procedure, 1973, (Cr.P.C.) respectively. But, 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 Cr.P.C. Learned trial Court held that the investigation is in progress and custodial interrogation is necessary. There are no reasonable grounds to grant relief under section 438 of the Cr.P.C. Eventually, learned Additional Sessions

Judge rejected applications of the appellants for anticipatory bail and passed the impugned order, the validity, propriety and correctness of which is agitated in the present appeal.

5. Mr. Panale, 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 learned counsel, there are no specific allegations made out under the Act of 1989. Even if, the allegations, in the FIR are taken as it is, would not constitute the offence that the appellants humiliated the first informant-complainant on her caste as she is belonging from Scheduled Caste category. Moreover, it does not make out a case that the appellants with sexual intent have abused the first informant /complainant. The appellants are implicated in this case only to cause harassment and hardship to them. The appellant-accused No. 1 is the 70 years old senior citizen and suffering from physical ailments. There was dispute between complainant and her son Pravin on account of shares in food grains of ration received from Fair Price Shop. The appellants-accused gave advice to the first informant to settle the dispute with her son. But, taking umbrage of the same, first informant-complainant preferred 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. The custodial interrogation of appellants-accused is not necessary for investigation purpose into the matter. Therefore, he requested to entertain the appeal and grant the relief of pre-arrest bail to the appellants in this case.

6. Learned APP for respondent No.1 and learned counsel appearing on behalf of respondent No. 2 vociferously raised objections and submitted 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 filthily within a public view. The appellants also caught hold the hand of complainant and driven her out of the Fair Price Shop. The circumstances reflect from the FIR are sufficient to draw an inference that the accused-appellants committed an offence under the Act of 1989. The appellants had an knowledge that the first informant/complainant is from "Chambhar" community recognized as Scheduled Tribe. Therefore, there is no propriety to grant relief of anticipatory bail under Section 438 of the Cr.P.C.

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)(w)(y) of the Act of 1989 against the present appellant, 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.”

(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.”

(y) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any other section thereof have a right to use or access to;

9. Provisions of Section 3(1) of the Act of 1989 makes it mandatory on the part of complainant to show *prima facie* in the FIR that accused is not a member of Scheduled Castes or Scheduled Tribes. The provision of Section 3(1)(w) of the Act of 1989 requires the alleged humiliation by way of intentional touching to the complainant was of sexual in nature and also

under knowledge that she was belonging to Scheduled Caste or Scheduled Tribe category. 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 matter in hand, absolutely there are no averments to the effect that both the appellants-applicants are belonging from higher caste or atleast they are not a member of Scheduled Castes or Scheduled Tribes. There are also no whisper in the FIR/complaint that both appellants had an knowledge that complainant was from Scheduled Castes or Scheduled Tribes category. It is true that there are allegations that appellants hurled abuses to the complainant on caste by saying "*Chambhar*". But, bare uttering word "*Chambhar*" would not itself sufficient to draw the inference that appellants had an knowledge or 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 "*Chambhar*" during the course of hot exchange of

words may be to abuse her more filthily. Moreover, the allegation that the appellants caught hold her hand to drive her out of the shop could not be considered as touching to her with sexual intent nor the alleged filthy abuses itself would constitute offence under section 3(1)(w)(i)(ii) of the Act of 1989.

11. The learned counsel for respondent No. 2-first informant drawn attention of this Court to the contents of FIR and submit that in the FIR the appellant-accused is shown belonging from "Vellum" community. It is true that caste of appellant was given as "Vellum" as per FIR, but it has not unfurled that the "Vellum" community is not from Scheduled Caste and Scheduled Tribe category. Therefore, it remains a conundrum that whether the appellants are not from Scheduled Castes and Scheduled Tribes category. The first informant did not mention about the caste of appellant No. 2 Pradeep Surwase. It is also doubtful that the allegation made in FIR even if they are taken at their face value do not *prima facie* constitute the offence under section 3(1)(y) of the Act of 1989. These circumstances being main and basic ingredients of Section 3(1)(w)(y) of the Act of 1989 and the absence of the same will have an serious impact as to the allegations to constitute offence under Act of 1989.

12. 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, is totally absent in the alleged FIR. 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 SC or ST community. The abuses by uttering words "*Chambhar*" 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.

13. It would be reiterated that in view of factual aspects of the matter and in spite of bar under Section 18 of the Act, 1989, for invocation of power under Section 438 of the Cr.P.C., it is still open to the Court to find out by looking to the FIR of the case itself as to whether *prima facie* case is made out by the complainant against the appellants. The circumstances on record are not sufficient to arrive at the conclusion that there are material *prima facie* on record to draw adverse inference against the appellants. Therefore, there is no impediment to entertain the applications of applicants-appellants for the relief of their pre-arrest bail under Section 438 of the Cr.P.C.

14. In regard to the allegations of assault or criminal force

with intent to outrage her modesty and intimidation as envisaged under Sections 354 and 294 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. The learned Sessions Judge/Special Judge did not appreciate the factual scenario in proper manner and adopted superficial approach. The impugned orders are perverse and liable to be interfered with. Therefore, there is no impediment to allow present appeal for the relief of anticipatory bail in favour of appellants-accused in the present crime. Hence, appeal deserves to be allowed.

15. In sequel, the appeal stands allowed. The impugned order passed by learned Additional Sessions Judge, Latur, in Criminal Miscellaneous Applications No. 155 and 154 of 2019, dated 28-03-2019, are hereby quashed and set-aside. The applications of the appellants-applicants filed under Section 438 of the Cr.P.C. for their pre-arrest bail before the learned trial Court, are hereby allowed. The appellants - (1) Suryakant S/o Vitthalrao Shelke, and (2) Pradip S/o Ramrao Surwase, be released on bail in the event of their arrest in connection with Crime No. 20 of 2019, registered at Latur Rural Police Station, District Latur, for the offence punishable under Sections 354 and 294 read with Section 34 of IPC and Section 3(1)(r)(s)(w)(y) 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 the 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 Latur Rural Police Station, District Latur, 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.

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

[K. K. SONAWANE]
JUDGE

MTK.