

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

CRIMINAL APPEAL NO. 539 OF 2019

- 1 Dnyaneshwar Waman Mandole,
Aged 67 years, Occu. Service retired,
- 2 Kamal Dnyaneshwar Mandole,
Aged 62 years, Occu. Housewife,
Both are residing at 168, Forest
Colony,
Devpur, Dhule.
- 3 Prabhulal Dnyaneshwar Mandole,
Aged 42 years, Occu. Medicine whole
sell business, R/At Plot No. 4,
Vidhyutprabha Society Valwadi,
Devpur, Dhule. .. Appellants

VERSUS

- 1 The State of Maharashtra
(At instance of Dhule City Police
Station, Dhule)
- 2 Jyoti Nitin Mandole,
Aged 36 years, Occu. Service,
Residing at 71, Utkarsh Colony,
Sakri Road, Dhule .. Respondents

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Mr. Ranjit Mala Pawara, Advocate for appellant.
Mr. M. M. Nerlikar, APP for respondent No. 1.
Mr. V. H. Dighe, Advocate for respondent No.2.

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**CORAM : T.V. NALAWADE &
K. K. SONAWANE, JJ.**

DATED : 08th AUGUST, 2019.

ORAL JUDGMENT :-

(PER : K. K. SONAWANE, J.)

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

2. The appellants preferred present appeal under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (Hereinafter, referred to as, "Act of 1989", for the sake of brevity) for the relief of pre-arrest bail in Crime No. 129 of 2015 registered at Dhule City Police Station, District Dhule, under Sections 498-A, 323, 504, 506, 406, 313, 417 and 494 read with Section 34 of the Indian Penal Code (for short "IPC") and under Section 3(1)(x) of the Act of 1989. The appellants-accused agitated the validity and propriety of the impugned orders dated 01-03-2019 and 16-05-2019, rendered by the learned Additional Sessions Judge, Dhule, rebuffing the relief of anticipatory bail in Criminal Bail Applications No. 129 and 387 of 2019, in the aforesaid crime.

3. It has been alleged on behalf of prosecution that complainant Sau. Jyoti Nitin Mandole filed the private complaint bearing Criminal Misc. Application No. 1256 of 2015 for the relief to issue process against so-called accused under Sections 498-A, 323, 504, 506, 406, 313, 417 and 494 read with Section 34 of IPC and under Section 3(1) (x) of the Act of 1989. The learned Magistrate appreciated the allegations nurtured on behalf of complainant and transmitted the matter to the concerned Police for investigation under Section 156(3) of the Cr.P.C. Pursuant to directions from the learned Magistrate, the Police of Dhule City Police Station, Dhule registered the Crime No. 129 of

2015 and swung into action. According to complainant, she is from *Adivasi Pardhi* community and highly educated lady. The accused-husband is from Dhobi community and their inter-caste marriage was performed on 23-11-2007. After the marriage, the complainant- wife joined company of husband - Nitin for cohabitation. Initially, she received proper treatment from husband and other inmates of matrimonial home. It has been alleged that husband - Nitin was hot tempered person and when these spouses were at Wardha that time complainant herself tolerated the ill-natured behaviour and cohabited with the husband - Nitin for better future of marital life. However, in the year 2007, the complainant met with an accident at Wardha and sustained fracture injuries to his leg. The surgery was performed on the complainant for the injuries received in the mishap. The economic condition of husband became worsened and therefore he started ill-treatment and harassment to the wife. The other accused were also not satisfied with the marriage of the spouses. They all used to scold and torture her on account of caste etc. There were mental and physical cruelty to the complainant from the husband and his relatives as well as friends. Due to financial crises, spouses came to reside at Dhule, but the accused were not happy with the complainant. Meanwhile, the complainant became pregnant, but, the accused forced her for abortion. The husband joined the services at Mumbai, but, he did not allow the

complainant-wife for cohabitation with him at Mumbai. The in-laws and other inmates of matrimonial home subjected her mental and physical cruelty. On 27-05-2014, the complainant-wife met with husband at JJ Hospital, Mumbai, but, she was not allowed to enter into the House. The husband abused on account of her caste. There were an attempt to demand Rs.15 Lakhs to purchase flat at Mumbai, from the complainant if she is interested for cohabitation with the husband. There was beating and abusing to the complainant. The accused also gave threat of life to her. Eventually, complainant made endeavour to file report to the Police, but, found unavailing. At last, she approached to the Court of Magistrate for justice and filed the private complaint.

4. After registration of crime, Investigating Officer carried out investigation, drawn the relevant panchnama, recorded statements of witnesses acquainted with facts of the case. IO collected relevant documents and after completion of investigation, IO submitted charge-sheet before the learned Special Court at Dhule. Pending the proceeding, the appellants moved the application to enlarge them on pre-arrest bail in the crime. But, the learned Sessions Judge did not incline to nod in favour of appellants and rejected the application. The learned Additional Sessions Judge passed the impugned orders, which are subject-matter of the present appeal.

5. We have given anxious consideration to the arguments advanced on behalf of both sides as well as on behalf of respondent No. 2-original complainant-Jyoti Mandole. We have also perused the relevant documents produced on record including impugned orders passed by the learned trial Court rebuffing of relief of pre-arrest bail to the appellant.

6. Learned APP and learned counsel for respondent No. 2 – complainant raised the objection and submitted that the provisions of Section 18A of the Act of 1989 put embargo on the Court for exercise of powers under Section 438 of Cr.P.C. The appellants committed crime against the person, who is the member of Scheduled Caste community. The allegations nurtured against appellants-accused are sufficient to make out the case against them. Therefore, in view of statutory bar under Sections 18 and 18A of the Act of 1989, the appellants are not entitled for any relief of pre-arrest bail into the crime.

7. It is not in dispute that there is a statutory bar under Section 18 and 18A of the Act of 1989 to entertain the application for relief of pre-arrest bail filed under Section 438 of Cr.P.C. But, the law does not preclude this Court to enter into the scrutiny of allegations to determine whether the appellants can be treated as an accused in this crime for commission of offence under the Act of 1989. It is settled principle of law that application of

anticipatory bail can be entertained only on the ground of inapplicability of the provisions of the Act of 1989 and it would be ascertainable only on perusal of the FIR or complaint. It is incumbent on the part of the Court to examine as to whether appellants/affected person to be treated as accused in the crime registered against them under the Act of 1989. Undisputedly, provisions of Sections 18 (18A) of the Act of 1989 does not bar judicial scrutiny of the accusation made in the complaint.

8. Now, turning to the allegations made against present appellants in the alleged FIR, we find considerable merit in the arguments advanced on behalf of learned APP and learned counsel for respondent-original complainant. It is not in dispute that respondent – complainant was the member of scheduled caste community and she performed the inter-caste marriage with accused-husband, who is from other caste. Perusal of FIR demonstrates that there are specific allegations against appellants about their involvement and participation into the crime committed against member of Scheduled Caste. The present appellants are the father, mother and brother of the husband of respondent No. 2-original complainant Jyoti. There are specific allegations against them about atrocity to the complainant respondent - Jyoti on account of her caste. Moreover, the Police applied Sections 323 and 506 of IPC in this case against appellants, which are the scheduled offences as

contemplated under Section 3(2)(va) of the Act of 1989. In such circumstances, in view of statutory prohibition under Sections 18 and 18A of the Act of 1989, it would not be permissible for this Court to entertain the application of the appellants filed under Section 438 of the Cr.P.C. for the relief of their pre-arrest bail.

9. The learned trial Court correctly appreciated the legal impediment of Sections 18 and 18A of the Act of 1989 to grant relief in favour of appellants and rejected both the applications. We do not find any merit in the contentions propounded on behalf of appellants to cause any interference in the order passed by learned trial Court. There is no legal error or perversity in the impugned order of the learned trial Court. The nature of allegations nurtured against appellants, *prima facie*, attract the provisions of Act of 1989 and therefore law does not permit this Court to appreciate other factual aspects of the matter for grant of pre-arrest bail in their favour. In the result, the present appeal of the appellants being not amenable for consideration of relief under section 438 of the Cr.P.C. owing to statutory bar under Sections 18 and 18A of the Act of 1989, deserves to be dismissed. Accordingly, the appeal stands dismissed. Rule stands discharged. No order as to costs.

[K. K. SONAWANE]
JUDGE

[T.V. NALAWADE]
JUDGE

MTK.