

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

CRIMINAL APPEAL NO. 557 OF 2019

Jayshree @ Jaya Jagdishlal Jaiswal,
Age : 40 years, Occupation- Service,
R/o : Shankarnagar, Old Jalna, Jalna,
Taluka and District Jalna.

... APPELLANT
(Ori. Accused No.3)

VERSUS

1. The State of Maharashtra,
Through Investigation Officer,
Kadim Jalna Police Station,
Taluka Jalna, District Jalna.
2. Arvind Pandurang Wankhede,
Age : 25 years, Occu. Labour,
R/o : Sanjay Nagar, Old Jalna,
Taluka and District Jalna.

... RESPONDENTS
(Respondent No. 2 -
Original Complainant)

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Mr. Ravindra V. Gore, Advocate for Appellant.
Mr. A. A. Jagatkar, APP for Respondent No. 1 – State.
Mr. R. D. Thorat, Advocate for respondent No. 2.

...
CORAM : K.K. SONAWANE, J.

DATE : 6th NOVEMBER, 2019.

JUDGMENT :-

1. Heard. **Admit.** The matter is taken up for its finality on merit with the consent of both sides.

2. The appellant preferred the present appeal against the impugned Order of rebuffing the relief of pre-arrest bail of the appellant in Crime No. 186 of 2019 registered with Kadim Jalna Police Station, District Jalna, under Sections 325, 323, 504 and 506 read with Section 34 of the Indian Penal Code (IPC) and

under Sections 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 of brevity). The appellants-accused preferred the present appeal by invoking remedy under Section 14-A(2) of the Act of 1989.

3. According to prosecution, on 12-05-2019, the complainant – Arvind Pandurang Wankhede, resident of Sanjaynagar, Old Jalna approached to the Police of Kadim Jalna Police Station, District Jalna, and ventilated the grievance that on 11-05-2019 at about 10.30 p.m. after attending the programme of marriage anniversary of one Mr. Amol Devkar, the complainant and his wife started proceeding towards their house. When they were passing from the house of Vishal Jaiswal, that time the dog of Vishal started barking. It has been alleged that when he tried to make the dog keep quiet, that time accused Sachin Jaiswal reprimanded the complainant and uttered the words of such a nature to humiliate and insult him on his caste. He hurled casteist abuses to the complainant within a public view. The accused Sachin Jaiswal also assaulted the complainant by means of iron rod and caused grievous injury to his head. The accused Vishal Jaiswal came there and assaulted the complainant with fists and kicks and gave threats of life. The present appellant indulged in abusing the complainant and exhorted the accused Vishal and Sachin Jaiswal to attack him.

4. Pursuant to FIR, the Police of Kadim Jalna Police Station, Jalna registered the Crime No. 186 of 2019 and set the penal law in motion. The appellants, apprehending his arrest, filed Criminal Misc. (Bail) Application No. 431 of 2019 under Section 438 of Code of Criminal Procedure, 1973 (Cr.P.C.). The learned Additional Sessions Judge considered the circumstances on record and rejected the application of the present appellant on the ground that there are allegations sufficient to make out the offence under the Act of 1989 and in view of bar under Section 18 of the Act of 1989, the appellant is not entitled for relief of anticipatory bail in this case. The validity and propriety of impugned order of refusing the relief for anticipatory bail of the appellant is agitated in the present appeal.

5. The learned counsel for appellant vehemently submits that the appellant is innocent of the charges pitted against her. She has not committed any crime, but she has been falsely implicated in this case. According to learned counsel, the allegations made in the FIR are not sufficient to constitute the offence under the Act of 1989 against appellant. Therefore, statutory bar under Sections 18 and 18-A of the Act of 1989 would not be made applicable to preclude the appellant for availing benefit of Section 438 of the Cr.P.C. in this case. The learned counsel for appellant submitted that the learned trial Court committed error in refusing the relief of pre-arrest bail to the appellant. There are no

allegation of overtact of appellant for abusing the complainant on his caste nor she participated in actual incident of assault. The ingredients of Section 3(1)(r)(s) of the Act of 1989 are not attracted against the appellant. Therefore, there is no any impediment to entertain the application for relief of pre-arrest bail filed on behalf of present appellant. The learned counsel further submitted that, there would not be any recovery nor custodial interrogation of the appellant is essential for the sake of investigation. Therefore, impugned order rejecting application for bail by learned trial Court be set aside and appeal be allowed.

6. Learned APP and learned counsel for respondent No. 2 raised, the objections and submitted that the section 18-A of the Act of 1989 put embargo on the Court for exercise of discretion under Section 438 of the Cr.P.C..The appellant hurled abuses and instigated her brothers to assault first informant and to humiliate and insult him within a public view. Therefore, learned trial Court rejected the application for bail after considering the statutory bar under Sections 18 and 18-A of the Act of 1989. There is no error or illegality committed by learned trial Court. There is no propriety to entertain the appeal. The respondent No. 2 filed the affidavit-in-reply on record and also produced the relevant documents of medical treatment of injured Arvind Wankhede. The learned counsel appearing for respondent No. 2 submits that there was serious injuries to the nasal bone of first informant. He

was hospitalized for considerable period. The offence committed by appellant is serious one.

7. This Court on earlier occasion dealt with the issue of applicability of Sections 18 and 18-A of the Act of 1989 to entertain the application for pre-arrest bail under Section 438 of the Cr.P.C. In the proceeding of ***Criminal Appeal No. 787 of 2018 (Kiran Madhukar Ingle Versus State of Maharashtra and another)***, this Court in paragraphs No. 13 and 15 of said Judgment elaborately discussed the scope of statutory bar under section 18 of the Act of 1989. It has also been observed that application for anticipatory bail can be entertained only on the ground of inapplicability of provisions of Act of 1989 and it would be ascertained only on the basis of recitals of the FIR or complaint and not embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegation made in the FIR. Paragraphs No. 13 and 15 of aforesaid judgment are reproduced 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 present appeal, the 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."

9. Intense scrutiny of the factual aspects of the present matter reveals that *prima facie* ingredients of penal provisions of the Act of 1989 do not match with the allegation nurtured on behalf of first informant against the appellant in this 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 Caste and Scheduled Tribe in any place within "public view". It is imperative to appreciate that *mensrea* is the decisive factor in the offence under Act of 1989. In the case of ***Shantabai Vs. State of Maharashtra*** reported in **1982 Cr.L.J. 872**, it was 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 within a public view. In the matter in hand, it is worth to mention that there are no allegation against the appellant that she hurled casteist abuses to first informant. There are general and omnibus allegation about the abusing on the part of appellant. Therefore, it would be unsafe, *prima facie* to blame the appellant for commission of crime under Act of 1989.

10. Taking into consideration all the aforesaid aspect of the matter, there is no impediment to perceive 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 to the recitals of FIR of the case itself, as to whether *prima facie* case is made out by the first informant against present appellant. As referred supra, the scrutiny of factual score reveals that there are no sufficient material available on record *prima facie* to arrive at the conclusion that the allegations nurtured on behalf of prosecution constitute offence under the Act of 1989 against appellant. Therefore, there is no impediment to entertain the application filed under Section 438 of Cr.P.C. for relief of pre-arrest bail on behalf of appellant.

11. In regard to offences levelled against the appellant under Sections 325, 323, 504 and 506 read with Section 34 of the IPC, it is essential to appreciate that there is no necessity for custodial interrogation of the appellant for the sake of investigation in this crime registered against her. There would not be any recovery from the appellant during the course of investigation. Moreover, the appellant has shown inclination to co-operate the Investigating Officer during the course of investigation. In such circumstances, there is no impediment to allow the bail application filed on behalf of appellant before learned trial Court.

12. In sequel, the appeal stands allowed. The impugned order dated 21-05-2019 passed by the learned Additional Sessions

Judge, Jalna, in Criminal Miscellaneous (Bail) Application No. 431 of 2019 is hereby quashed and set aside. The application of the appellant filed under Section 438 of Cr.P.C. for her pre-arrest bail before the learned Sessions Court is hereby granted. The present appellant be released on bail in the event of her arrest in connection with crime No. 186 of 2019 registered with Kadim Jalna Police Station, Taluka and District Jalna for the offence punishable under Sections 325, 323, 504 and 506 read with Section 34 of the Indian Penal Code and under Section 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on furnishing PR bond of Rs.20,000/- (Rupees Twenty Thousand) with one solvent surety of like amount. It is stipulated that appellant-applicant shall not indulged, directly or indirectly, in any kind of activities of tampering with the evidence of prosecution witness and shall co-operate the Investigating Officer for the sake of investigation into the crime. Inform concerned Investigating Officer accordingly.

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

Sd/-

[K. K. SONAWANE]
JUDGE