

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

CRIMINAL APPEAL NO. 649 OF 2019

1. Pravin S/o Machindra Neel,
Age : 27 years, Occup.Private Service,
R/o : Plot No. 4-12-387,
Durga Mata Colony, Nyay Nagar,
Garkheda, Tq. And Dist. Aurangabad.
2. Vishal S/o Machindra Neel,
Age: 25 years, Occ: Education,
R/o: As above. ... APPELLANTS

VERSUS

1. The State of Maharashtra

[Through the Asst. Superintendent
of Police at Aurangabad,
Police Station, Pandaliknagar,
Tq & District Aurangabad.]
2. Abhijeet Pralhad Magare.
Age : 29 years, Occu. Nil,
R/o : Galli No. 11, Nyay Nagar,
Gakheda Parisar, Taluka and
District Aurangabad. ... RESPONDENTS

...

Mr. Vijay B. Jogdand Patil, Advocate for Appellants.
Mr. A. A. Jagatkar, APP for Respondent No. 1 – State.
Mr. R. V. Gore, 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. This appeal is directed against the impugned Order of rebuffing the relief of pre-arrest bail to the appellants in Crime No. 45 of 2019 registered with Pundaliknagar Police Station, Aurangabad, under Sections 336, 323, 504 and 506 read with Section 34 of the Indian Penal Code (IPC) and under Sections 3(1)(x) 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. The prosecution case in short compass is that on 28-01-2019, complainant – Abhijeet Pralhad Magare, resident of Nyay Nagar, Garkheda Parisar, Aurangabad rushed to the Police of Pundaliknagar Police Station, Aurangabad, District Aurangabad and filed the report that on 26-01-2019 at about 9.15 p.m. first informant visited the house of his friend Vinod Mote to give information about the credit card transaction, its EMI etc to him. According to prosecution, at about 11.00 p.m. when they both were sitting in the drawing room of the house of Vinod, that time, the accused Raj Neel barged into the house and hurled abuses to first informant in filthy language. He also assaulted the first informant by giving slaps. It has been alleged that at the relevant time the accused Raj Neel gave casteist abuses to the first informant. He had also attempted to assault him by knife.

Thereafter, the brothers of assailant Raj i.e. appellants - Pravin and Vishal arrived at the house of Vinod and they also attacked the first informant, his mother, brother etc. They flung the stone and caused injury to the leg of mother of first informant.

4. Pursuant to FIR, the Police of Pundaliknagar Police Station, Aurangabad, registered the Crime bearing No. 45 of 2019 and set the penal law in motion. The appellants, apprehending their arrest, filed Criminal Bail Application No. 1106 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 appellants 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 appellants are not entitled for relief of anticipatory bail in this case. The impugned order of rejection of application for anticipatory bail of the appellants is the subject-matter of present appeal.

5. The learned counsel for appellants vehemently submits that the appellants are innocent of the charges pitted against them. They have not committed any crime, but they are 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. Therefore, statutory bar under Section 18 of 18-A of the Act of 1989 would not be made

applicable to preclude the appellants for availing benefit of Section 438 of the Cr.P.C. in this case. The learned counsel for appellants submits that there are cross-complaint filed against each other by first informant and Raj Neel – brother of appellants. The appellants have no any criminal antecedents. The appellants have no any involvement in commissions of crime. But, they are falsely involved in it. There is no any impediment to entertain the application for relief of pre-arrest bail filed on behalf of present appellants. The learned counsel further contends that there is no any recovery nor custodial interrogation of the appellants is essential for the sake of investigation. Therefore, the 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 opposed the contentions propounded on behalf of appellants 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 present appellants participated in the incident of assault to the first informant. The 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.

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)(x) 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 :-

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.

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 in this case. The basic ingredients of section 3(1)(x) 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, there are no such allegations against appellants of intentionally insult or intimidate with intent to humiliate the first informant on his caste within public view. The FIR adumbrates that the appellants only taken part in assaulting the mother and brother of first informant and caused injury to the leg of mother by pelting stone.

10. Taking into consideration all the aforesaid attending circumstances 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 appellants. As referred supra, the

scrutiny of factual score reveals that there are no material available on record *prima facie* to arrive at conclusion that the allegations nurtured on behalf of prosecution constitute offence under the Act of 1989 against the appellants. 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 appellants.

11. In regard to offences levelled against the appellants under Sections 336, 323, 504 and 506 read with Section 34 of the IPC. it is to be noted that the custodial interrogation of the appellants is not essential nor there would be any recovery from appellants for the sake of investigation. The assailant Raj Neel was arrested and I.O. availed custodial interrogation of accused Raj Neel. There was no recovery from him. However, the appellants have shown inclination to co-operate with the Investigating Officer during the course of investigation. In such circumstances, there is no impediment to allow the bail application filed on behalf of appellants before learned trial Court.

12. In sequel, the appeal stands allowed. The impugned order dated 29-05-2019 passed by the learned Additional Sessions Judge (Special Judge SC & ST), Aurangabad, in Criminal Bail Application No. 1106 of 2019 is hereby quashed and set aside. The application of the appellants filed under Section 438 of Cr.P.C. for their pre-arrest bail before the learned Sessions Court

is hereby granted. The present appellants be released on bail in the event of their arrest in connection with Crime No. 45 of 2019 registered with Pundaliknagar Police Station, Aurangabad, for the offence punishable under Sections 336, 323, 504 and 506 read with Section 34 of the Indian Penal Code and under Section 3(1) (x) 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 each. It is stipulated that appellants-applicants shall not indulged, directly or indirectly, in any kind of activities of tampering with the evidence of the prosecution witnesses. The appellants-applicants shall attend the Pundaliknagar Police Station, Aurangabad on every Sunday in between 11.00 a.m. to 3.00 p.m. till filing of the charge-sheet and co-operate the Investigating Officer for the sake of investigation into the crime. Inform the 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

MTK.
