

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

CRIMINAL APPEAL NO. 678 OF 2019

Chhaya w/o. Abhimanyu Devkate,
Age : 48 years, Occupation- Household,
R/o. : Shivaji Nagar, Taluka Murud,
At present Ter, Taluka and District -
Osmanabad.

... APPELLANT
(Original Accused)

VERSUS

1. The State of Maharashtra,
Through the Police Officer,
Rural Gramin Police Station,
Latur, Taluka and District Latur.

2. Anuksha Pandurang Kamble,
Age : Major, Occu. Household,
R/o. : Bharne, Taluka Khed,
District Ratnagiri.

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

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Mr. P. P. More, Advocate for Appellant.
Mr. A. A. Jagatkar, APP for Respondent No. 1 – State.
Mr. B. G. Londhe, Advocate for Respondent No. 2.

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

DATE : 8th 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. 95 of 2019 registered with Latur Gramin Police Station, District Latur, under Section 420 read with Section

34 of the Indian Penal Code (IPC) and under Section 3(1)(ii) 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 appellant-accused preferred the present appeal by invoking remedy under Section 14-A(2) of the Act of 1989.

3. According to prosecution that on 18-06-2019, complainant – Anuksha Pandurang Kamble, resident of Bharne, Taluka Khed, District Ratnagiri, rushed to the Police of Latur Gramin Police Station, District Latur, and ventilated the grievance that in the year 2016, after examination of 10th standard, she came to the house of her maternal Aunt at Katpur, District Latur, for enjoying vacation. Meanwhile, she came in contact with accused Vishwajeet Abhimanyu Devkate, son of appellant-accused. Thereafter, Vishwajeet developed intimacy with the first informant. He gave promise of marriage to the first informant. There were physical relations in between first informant and Vishwajeet under the pretext of promise of marriage. In the year 2019, first informant became pregnant. She insisted the accused Vishwajeet to perform marriage with her. But, he refused to budge for marital relations with the first informant. According to prosecution, first informant, her parents had been to the house of Vishwajeet to see him and his parents and other relatives. The complainant and her parents made endeavour to give

understanding to them to perform marriage of Vishwajeet with first informant. But, the present appellant and other family members abused first informant on her caste and refused to perform marriage of Vishwajeet son of appellant with the first informant. Thereafter, the complainant-first informant filed the report.

4. Pursuant to FIR, the Police of Latur Gramin Police Station, District Latur registered the Crime No. 95 of 2019 and set the penal law in motion. The appellant, apprehending her arrest, filed Criminal Miscellaneous Application No. 374 of 2019 under Section 438 of Code of Criminal Procedure, 1973 (Cr.P.C.). The learned Additional Sessions Judge (Special Judge), Latur, 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 Section 18 and 18-A of the Act of 1989 would not be made applicable to preclude the appellant for availing the benefit of Section 438 of the Cr.P.C. in this case. The learned counsel for appellant submits that the learned trial Court committed error in refusing the relief of pre-arrest bail to the appellant. There are general allegations made against the appellant for abusing the complainant on her caste. The learned counsel drawn the attention of this Court towards the impugned order of learned Sessions Judge. He contends that the learned Sessions Judge granted relief of pre-arrest bail to other co-accused i.e. other family members of appellant. The learned trial Court considered the statement of first informant recorded by Osmanabad Police in which she had stated that these family members were not present on the spot at the relevant time. However, the learned trial Court rejected the application of present appellant. He urged that the ingredients of Section 3(1)(ii) 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 submits that, there is no any recovery nor custodial interrogation of the appellant is essential for the sake of investigation. The learned trial Court ought to have grant relief

to the present appellant. Therefore, impugned order rejecting application for bail by learned trial Court be set aside and appeal be allowed.

6. Learned APP for respondent No.1 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 Cr.P.C. The appellant hurled abuses to first informant with intent to cause injury, insult or annoyance to her. 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. Learned counsel for respondent No.2 submits that, *prima facie* there are allegations against present appellant to attract the provision of Section 3(1)(ii) of the Act of 1989. The custodial interrogation of appellant-accused for recovery of Rs.30,000/- and 5 Tolas gold ornaments from the possession of accused Vishwajeet. The appellant and her family members played mischief with the first informant and her family under false promises that they would perform marriage of first informant with Vishwajeet.

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)(ii) 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 :-

(ii) acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood;

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. I am at my wit's end that how the Police applied Section 3(1)(ii) of the Act of 1989 against appellant in this case. It is strange to appreciate that the

provisions of S 3(1)(ii), prior to amendment in the year 2016, would be made applicable to the facts and circumstances of the matter in hand. If we consider that the provisions of Section 3(1)(ii) was mistakenly applied instead of Section 3(2)(v) of (va) of Act of 1989, even though same is not made applicable against the present appellant for the reason that all the basic allegations are against the prime accused Vishwajeet.

10. 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 with intent to humiliate the first informant within public view. There are general and stray allegation about 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.

11. 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.

12. In regard to offences levelled against the appellant under Section 420 read with Section 34 of IPC, it is essential to appreciate that there is no necessity for custodial interrogation of the appellant for the sake of investigation. There would not be any recovery from the appellant during the course of investigation. The other co-accused were granted anticipatory bail under section 438 of Cr.P.C. by learned trial Court. In view of rule of parity, the application for pre-arrest bail of appellant deserves to be allowed at par with relief granted to other co-accused. 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 grant the bail application filed on behalf of appellant before learned trial Court.

13. In sequel, the appeal stands allowed. The impugned order dated 05-07-2019 passed by the learned Additional Sessions Judge (Special Judge), Latur, in Criminal Miscellaneous Application No. 374 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. 95 of 2019 registered with Latur Gramin Police Station, District Latur, for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code and under Section 3(1)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on furnishing PR bond of Rs.7,000/- (Rupees Seven Thousand) with one solvent surety of like amount. It is stipulated that appellant-applicant shall not indulge, 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.

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

Sd/-

[K. K. SONAWANE]
JUDGE

MTK