

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

CRIMINAL APPEAL NO. 809 OF 2019

Snehal Aniket Bhosle,
Age: 25 years, Occu. Household,
R/o : Hadapsar, Dist. Pune

...APPELLANT
(Ori. Accused)

VERSUS

1. The State of Maharashtra,
 2. X
Age: 25 years, Occu. Education,
R/o: At post village Sangavi Dhumala,
Tq. Shrigonda, Dist. Ahmednagar
- ...RESPONDENTS

...

Mr. R.N. Dhorde, Senior Advocate instructed by
Mr. Vikram R. Dhorde, Advocate for appellant
Mr. R.D. Sanap, APP for respondent No. 1-State
Mr. M.R. Wagh, Advocate for respondent No. 2

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

DATE : 11th SEPTEMBER, 2019.

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

1. Heard. **Admit.** The matter is taken up for its finality on merit with the consent of both sides.
2. The instant appeal calls in question the validity and propriety of the impugned order of rebuffing the relief of pre-arrest bail to the present appellant – Snehal Aniket Bhosale in Crime No. I-708 of 2019 registered with Shrigonda Police Station, District Ahmednagar under Sections 376, 323, 504, 506 read with 34 of Indian Penal Code (IPC) and Section 3(1)(w)(r)(s) of

the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "Act of 1989" for the sake or brevity), rendered by the learned Additional Sessions Judge, Shrigonda, in Criminal (Bail) Miscellaneous Application No. 85 of 2019. The appellant-accused preferred the present appeal by invoking remedy under section 14-A(2) of the Act of 1989.

3. Genesis of the appeal culled out in brief is that the prosecutrix – first informant on 23-06-2019 approached to the police of Shrigonda Police Station and ventilated the grievances that one of the accused by name Lakhan Kumar Kakade developed immoral relation with the prosecutrix under the pretext of promise of marriage. He, time and again, ravished the prosecutrix sexually. The maternal uncle – Shri Laxman Nalage, aunt – Smt. Nalage, brother – Sudhri Nalage, etc. all helped the accused Lakhan for sexual assault on prosecutrix. There are allegation about video shooting of molestation of victim – prosecutrix. But, later on the accused Lakhan and his relatives refused to get the prosecutrix married with accused Lakhan. They all gave threats of dire consequences to prosecutrix and also beaten-up her, when she had been to Police Station for lodging the complaints. There was also attempt to administer poisonous substance to prosecutrix. According to prosecution, the accused including the present appellant-accused in furtherance of their

common intention assisted the prime culprit Lakhan for committing the crime of sexual assault. It has been alleged that the prosecutrix belongs to *Mahar* community, which is recognized as scheduled caste category. The appellant-accused hurled castiest abuses to the victim prosecutrix.

4. Pursuant to FIR of prosecutrix, the Police of Shrigonda Police Station registered the Crime No. I-708 of 2019 and set the penal law in motion. The appellant-accused and her accomplices apprehending arrest into the crime, filed the application bearing Criminal (Bail) Miscellaneous Application No. 85 of 2019 under Section 438 of Code of Criminal Procedure (Cr.P.C.) for their pre-arrest bail. But, the learned Sessions Judge found reluctant to grant any sort of relief in favour of appellant-accused and rejected the application. The impugned order of rejection of application of appellant-accused filed under Section 438 of Cr.P.C for pre-arrest bail is the subject-matter of present appeal.

5. Mr. R. N. Dhorde, learned Senior Advocate appearing for appellant-accused vehemently submits that the present appellant is innocent of the charges pitted against her. She has not committed any crime as alleged by the prosecution, but she has been implicated in this case by making false accusation. According to learned Senior Advocate Mr. Dhorde, the allegation nurtured on behalf of prosecution against the appellant-accused

does not constitute offence under Section 3(1)(r)(s) or Section 3(1) (w)(i) of the Act of 1989. Therefore, there is no statutory bar as prescribed under Sections 18 and 18A of the Act of 1989 for grant of pre-arrest bail to the appellant-accused under Section 438 of Cr.P.C. The appellant-accused has no nexus or proximity with the alleged crime of sexual assault on the prosecutrix. There are vague and omnibus allegations that appellant-accused helped her brother accused Lakhan for committing the offence under Section 376 of the IPC. According to learned Senior Advocate, the appellant-accused is the resident of Hadapsar, Pune. During relevant period of February, 2019 she was admitted in Katariya Hospital, Gandhi Chowk, Daund for delivery purpose. Learned Senior Advocate submits that on 13-02-2019, the appellant-accused gave birth to one female child. He produced the birth certificate of newly born baby issued by the concerned Hospital dated 17-02-2019. According to learned Senior Advocate, appellant-accused has no any involvement in the alleged crime, but with *malafide* intention prosecutrix embroiled her by making false allegation in this case. The attending circumstances on record are not sufficient to make out the offence under the provisions of Act of 1989. There is no necessity of custodial interrogation of the appellant-accused, who is mother of newly born sucking child. Therefore, he requested to grant relief of pre-arrest bail in favour of appellant-accused.

6. Learned APP and learned counsel for respondent No. 2-prosecutrix raised the objection and submit that there is embargo of sections 18 and 18A of the Act of 1989 for exercising powers under Section 438 of the Cr.P.C. by the Court. The appellant-accused in furtherance of their common intention assisted the brother Lakhan, who has assaulted prosecutrix sexually on several occasions under pretext of promise of marriage. The appellant-accused hurled castiest abuses to the prosecutrix. The circumstances reflect from the FIR on record are *prima facie* sufficient to make out the offence under Sections 3(1)(r)(s) or 3(1)(w)(i) of the Act of 1989. Therefore, application for anticipatory bail is not amenable to entertain for relief as prayed on behalf of appellant. The learned APP produced the relevant documents of investigation of the crime for perusal.

7. In view of rival contentions, it would be worthwhile at the threshold to examine the contours and scope of applicability of Section 18 of the Act of 1989 as well as newly incorporated Section 18A of the Act of 1989, especially, when the appellant approached to this Court for relief under Section 438 of the Cr.P.C. It is essential to find out as to whether there is absolute bar created under Sections 18 and 18A of the Act of 1989 for invoking powers under Section 438 of the Cr.P.C. The provisions of Section 18 of the Act of 1989 is reproduced as under.

“Section 18- Section 438 of the Code not to apply to

*persons committing an offence under the Act :-
Nothing in Section 438 of the Code shall apply in
relation to any case involving the arrest of any person
on an accusation of having committed an offence
under this Act.”*

8. In addition to the aforesaid provision of Section 18 of the Act of 1989, the recent amendment of 2018 incorporated the new provision of Section 18A, which reads as under:

“18A. (1) For the purposes of this Act :-

*(a) preliminary enquiry shall not be required
for registration of a First Information Report
against any person; or*

*(b) the Investigating Officer shall not require
approval for the arrest, if necessary, of any
person,
against whom an accusation of having
committed an offence under this Act has been
made and no procedure other than that
provided under this Act or the Code shall
apply;*

*(2) The provisions of Section 438 of the Code shall
not apply to a case under this Act, notwithstanding
any judgment or direction of any Court.”*

9. The conjoint reading of aforesaid provision of Section 18 as well as newly inserted Section 18A of the Act of 1989 would point out that, there is bar against grant of pre-arrest bail under Section 438 of Cr.P.C., if *prima facie* case is made out for the offence under the Act of 1989. It seems that the provision of Section 18A of the amendment Act, 2018 is framed in different words, but the essence of both the provisions of Section 18 and Section 18A demonstrate that the section 18A is nothing but an repetition of provision of Section 18 of the Act of 1989.

Therefore, the earlier judicial precedents of Hon'ble Apex Court and various High Courts in the matter of statutory bar under Section 18 of the Act of 1989 for invoking powers under Section 438 of the Cr.P.C. would be relevant and considerable as Lighthouse for determining the issue of applicability of Section 438 of Cr.P.C. in the cases registered under the Act of 1989. In the case of **Vilas Pandurang Pawar and another Vs. State of Maharashtra reported in 2012 Cri.L.J. 4520** the Honourable Supreme Court held in paragraph No. 9 as under:

“9. The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no Court shall entertain application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. Court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be brushed aside by elaborate discussion on the evidence.”

10. It is also profitable to make a reference of the decision rendered by the Co-ordinate Bench of this Court in the case of **Shashikant Ramhari Tambe and others Vs. State of Maharashtra** reported in **2008 All MR (Cri)2132**, in which it has been observed in paragraph No. 5 that:

“5. Useful reference may be made to a decision of the Supreme Court in the case of Mukesh Kumar Saini

vs. State (Delhi Administration) reported in 2002 ALL M.R. (Cri.) JOURNAL 41. In the said case, it was observed that there must be specific accusation alleged against each of the accused and Section 34 of the Indian Penal Code cannot be pressed into service. Omnibus statement that all the accused persons uttered allegedly humiliating word may not be enough. In the present case, there is no specific accusation alleged against each of the accused. Looking to the above facts, I am inclined to grant anticipatory bail to the applicants."

11. 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. If it is transpired that applicant-appellant-accused committed offence prescribed under Section 3 of the Act of 1989 bar under Section 18 of the Act of 1989 would instantly operate against him/her.

12. In the matter in hand, after perusal of the allegations nurtured on behalf of prosecution against the present appellant, *prima facie* reveals that the ingredients of aforesaid penal provisions do not match with factual score of the present case. The basic ingredients of section 3(1)(r)(s) are that there must be "intentional insults" or "intimidations" with "intent" to humiliate a member of Scheduled Castes and Scheduled Tribes in any place within "public view". It is abundantly clear that *mensrea* is the decisive factor in the offence under Act of 1989. The allegation against appellant-accused under Section 3(1)(w)(i) of

the Act of 1989 could not be made applicable against the present appellant as it is in regard to intentionally touches a woman belonging to a Scheduled Castes or Scheduled Tribes and the act of touching is of a sexual nature. The present appellant-accused is the female member. Moreover, there are no allegations about the offence under Section 376 of the IPC against appellant-accused. There are also no questions arises for attracting ingredients of Section 3(1)(r)(s) of the Act of 1989 of present appellant-accused, as it is hard to believe that the appellant hurled castiest abuses within public view.

13. In regard to other allegations of criminal intimidation etc. for offence under IPC, we are of the considered opinion that the custodial interrogation of the appellant-accused is not essential into the sake of investigation. As referred above, recently, she delivered female child in the month of February, 2019. The circumstance being mother of the newly born infant is also required to be taken into consideration for extending latitude in favour of appellant-accused while dealing with the issue of valuable liberty of the appellant-accused. It is unjust and improper to curtail valuable liberty of the appellant-accused for the sake of investigation. In view of attending circumstances on record, there is no difficulty at all to allow the present appeal for the relief of anticipatory bail in favour of the appellant-accused in the present crime. Hence, appeal deserves to be allowed.

14. Accordingly, Criminal Appeal stands allowed. The impugned order passed by the learned Additional Sessions Judge, Shrigonda, District Ahmednagar in Criminal (Bail) Misc. Application No. 85 of 2019 is hereby quashed and set aside only to the extent of present appellant-accused. The application filed on behalf of present appellant-accused for relief of anticipatory bail is hereby allowed to her extent only. In case of arrest of present appellant-accused in Crime No. I-708 of 2019, registered with Shrigonda Police Station, District Ahmednagar for the offences punishable under Sections 376, 307, 354(A), 452, 323, 504 and 506 of IPC and Sections 3(1)(r)(s)(w)(i) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 66(e) of the Information and Technology Act, 2000, she is to be released on bail on her furnishing PR and SB of Rs. 15,000/-. If Police wants to make inquiry with her, they are expected to send lady constable to her and make inquiry and statement can be recorded, if any. On the request made by learned counsel for respondent, it is noted that prosecutrix remained present during the hearing of the matter.

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

Sd./-

[K. K. SONAWANE]
JUDGE

Sd./-

[T.V. NALAWADE]
JUDGE