

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

CRIMINAL APPEAL NO. 876 OF 2019

1. Gayatri w/o. Sanjay Jaitmal,
Age : 35 years, Occup. Household,
R/o. : Hanuman Nagar, Pundlik Nagar,
Aurangabad.
2. Baburao S/o. Rahuba Sonawane,
Age : 59 years, Occu. : Labour,
R/o. : Hanuman Nagar, Pundlik Nagar,
Aurangabad.
3. Padmabai W/o. Baburao Sonawane,
Age : 55 years, Occu. : Household,
R/o. : Hanuman Nagar, Pundlik Nagar,
Aurangabad. ... APPELLANTS

VERSUS

1. The State of Maharashtra
Through Pundlik Nagar Police Station,
Aurangabad.
2. Anita Akash Sonawane,
Age : 20 years, Occu. Nil,
R/o. : Bharatnagar, Garkheda Parisar,
Aurangabad. Mobile No. 8999021269. ... RESPONDENTS

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Mr. Sayyed Tauseef Yaseen, Advocate for Appellants.
Mr. P. K. Lokhetiya, APP for Respondent No. 1 – State.
Mr. G. D. Jain, 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. This appeal is directed against the impugned Order of rebuffing the relief of pre-arrest bail of the appellants in Crime No. 53 of 2019 registered with Pundaliknagar Police Station, Aurangabad, under Sections 498-A, 323, 504 and 506 read with Section 34 of the Indian Penal Code (IPC) and under Section 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 05-02-2019, complainant – Anita Akash Sonawane, resident of Bharatnagar, Garkheda Parisar, Aurangabad, approached to the Police of Pundaliknagar Police Station, Aurangabad, District Aurangabad and ventilated the grievance that she was married with one Gokul Rangnath Adsule, resident of Gangapur, District Aurangabad, as per customary rites. But, there was marital discord between the spouses which resulted into dissolution of marital relationship of first informant and her husband Gokul. It has been contended that meanwhile, the first informant came in contact with one Akash Baburao Sonawane, son of the appellants No.2 and 3. There was love affairs developed in between the first informant and Akash and consequently they performed marriage on 28-08-2018. After marriage, first informant joined

the company of husband – Akash. Appellants No.2 and 3 are the in-laws, whereas, appellant No.1 is the sister-in-law of respondent No.2-first informant. It has been alleged that initially for about 2-3 months of the marriage all things were normal, but thereafter, first informant was maltreated and harassed by her husband and appellants for unlawful demand of money. They used to insult and humiliate the first informant by scolding her that she was belonging from lower caste. The first informant also cast allegations about beating and abusing by husband. The marital discord between spouses resulted into lodging the report for penal action against appellants under Section 498-A, 323, etc. of the IPC and Section 3(1)(x) of the Act of 1989 by the respondent No.2-first informant.

4. Pursuant to FIR, the Police of Pundaliknagar Police Station, Aurangabad, registered the Crime bearing No. 53 of 2019 and set the penal law in motion. The appellants, apprehending their arrest, filed the Criminal Bail Application No. 723 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. Learned counsel for appellants further submits that there were no physical and mental cruelty to the first informant on the part of appellants. But, she has filed present false penal proceeding with an *malafide* intention to harass the appellants. There were no specific allegations about maltreatment and torture meted out to the first informant-wife. The present FIR came to be lodged to wreak vengeance against members of appellants' family. The appellants have no any reason to cause interference into the marital affairs of the spouses. The allegations made in the FIR are vague and general in nature. 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 Sections 18 and 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. 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 appellant 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 appellants used to scold the first informant on her caste. 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. Learned counsel for respondent No.2 submit that the allegations of ill-treatment nurtured on behalf of first informant in the FIR discloses commission of crime under Sections 498-A, 323, 504 and 506 of IPC. The complainant categorically described the episode of her maltreatment and torture at the hands of appellants. There was unlawful demand of money from the appellants. There were allegations of physical and mental torture to the complainant. 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 against appellants 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 act of utterance of name of caste of first informant during altercation in a fit of rage would not be considered the intentional act of appellants to humiliate or insult on her caste.

10. Be that as it may, 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 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 against present appellants constitute offence under the Act of 1989. 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 498-A, 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. It is worth to mention that the Honourable Apex Court in the case of - **Kansraj Vs. State of Punja and others** reported in **(2000) 5 Supreme Court Cases, 207** observed that, *"a tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged is likely to affect the case of the prosecution even against the real culprits.* In the cases, where accusations are made, the overt-acts attributed to persons other than husband, are required to be proved beyond reasonable doubt. Their Lordships of Apex Court further observed that, *"in their over-enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused."*

12. In the case of - **Preeti Gupta and another Vs. State of Jharkhand and another,** reported in **(2010) 7 Supreme Court Cases 667,** it has been delineated that *ultimate object of justice*

is to find out truth and punish the guilty and protect the innocent. A serious relook of the entire provision of Section 498-A of Cr.P.C. is warranted by the legislature. It was observed that the exaggerated versions of the incidents are also reflected in a very large number of complaints.

13. Likewise, in the case of - **Arnesh Kumar Vs. State of Bihar and another**, reported in **(2014) 8 Supreme Court cases, 273**, the Honourable Apex Court elucidated the fact that, "*Section 498-A of IPC is a cognizable and non bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provisions.*"

14. In the matter in hand, in view of aforesaid legal guidelines there is no impediment to nod in favour of appellants. Moreover, 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.

15. In sequel, the Criminal Appeal stands allowed. The impugned order dated 26-06-2019 passed by the learned Additional Sessions Judge (Special Judge SC & ST), Aurangabad, in Criminal Bail Application No. 723 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. 53 of 2019 registered with Pundaliknagar Police Station, Aurangabad, for the offence punishable under Sections 498-A, 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 and shall co-operate the Investigating Officer for the sake of investigation into the crime. Inform the concerned Investigating Officer accordingly.

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

Sd/-

[K. K. SONAWANE]
JUDGE

MTK.
