

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

**CRIMINAL APPEAL NO. 901 OF 2019**

Shri Hanuman S/o Rambhau Pawar,  
Age: 32 years, Occu. Agriculture,  
R/o : Khali Tq. Gangakhed,  
District : Parbhani

...APPELLANT  
(Ori. Accused )

**VERSUS**

1. The State of Maharashtra,  
Through Police Inspector,  
Gangakhed Police Station,  
Tq. Gangakhed, Dist. Parbhani

2. Aakash S/o Ashok Ufade,  
Age: 28 years, Occu. Labour,  
R/o: Juni Bhaji Mandai,  
Avkhamb Board, Gangakhed,  
Tq. Gangakhed, Dist.Parbhani.

...RESPONDENTS  
(Respdt. No. 2 Ori. Informant)

...

Mr. P.D. Bachate, Advocate for appellant  
Mr. A.A. Jagatkar, APP for respondent No. 1-State  
Mr. A.R. Gaikwad, Advocate for respondent No. 2

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

**DATE : 11<sup>th</sup> 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 appellant in Crime No. 239 of 2019 registered with Gangakhed Police Station, Taluka Gangakhed, District Parbhani, under Sections 324, 323 and 504 of the Indian Penal Code (IPC) and under Section 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 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 on 29-05-2019, complainant – Aakash S/o Ashok Ufade, resident of Juni Bhaji Mandai Avkhamb Board, Gangakhed, Tq. Gangakhed, District Parbhani, approached to the Police of Gangakhed Police Station, District Parbhani, and filed the report that on the day of incident the appellant was eating the omelette on the handcart near the Wine Shop. According to prosecution, when complainant had been to said handcart for drinking water, his hand touched to the plate of appellant. At that time, the appellant reprimanded the complainant and hurled casteist abuses to him with intention to insult and humiliate complainant on his caste within a public view. There are allegations about assault causing hurt with the help of stone.

4. Pursuant to FIR, the Police of Gangakhed Police Station registered the Crime bearing No. 239 of 2019 and set the penal law in motion. The appellant, apprehending his arrest, filed Criminal Misc. Application (Bail) bearing No. 108 of 2019 under Section 438 of Code of Criminal Procedure, 1973 (Cr.P.C.) before the learned Additional Sessions Judge, Gagankhed. The learned Additional Sessions Judge considered the circumstances on record and rejected the application of the appellant on the ground that there are allegations sufficient to make out the offence under the Act of 1989.

The custodial of interrogation of appellant is necessary and therefore the appellant is not entitled for relief of anticipatory bail in this case. The impugned order of rejecting the application for anticipatory bail of the appellant is the subject-matter of present appeal.

5. The learned counsel for appellant vehemently submits that the appellant is innocent of the charges pitted against him. He has not committed any crime, but he 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. 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 benefit of Section 438 of the Cr.P.C. in this case. The learned counsel for appellant submitted that the provisions of Sections 3(1)(r)(s) of the Act of 1989 are not attracted to the facts and circumstances of the present case. There is delay in lodging the FIR. There is no any impediment to entertain the application for relief of pre-arrest bail filed on behalf of appellant. The learned counsel further submitted that there is no any recovery nor custodial interrogation of the appellant is required 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 objection 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 first informant-complainant is belonging to SC/ST community. The appellant hurled casteist abuses and assaulted the first informant-complainant to humiliate and insult him within a public view. The learned trial Court rejected the application for bail after considering the merits of the matter. 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 filed 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 the application for anticipatory bail could 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 roving 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 sections 3(1)(r)(s) 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 :-*

*(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 in this case. The basic ingredients of Section 3(1)(r)(s) are that there must be "intentional insult" 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 has been alleged that the appellant hurled abuses to the first informant by uttering the word "*Mangtya*". If the word "*Mangtya*" is taken out from FIR for moment, then rest of the conversation reflects from the recitals of FIR demonstrate the threat or intimidation but does not indicate that there was any *mensrea* or intention to humiliate the complainant-first informant on his caste within public view.

10. Taking into consideration all the circumstances discussed above, there is no impediment to conclude 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 324, 323 and 504 of the IPC, it is to be noted that custodial interrogation of the appellant is not essential as well as there would not be any recovery from appellant for the sake of investigation. However, the appellant has shown inclination to co-operate with the Investigating Officer during the course of investigation. In such circumstances, it would justifiable to allow the bail application filed before learned trial Court on behalf of the appellant.

12. In sequel, the Criminal Appeal stands allowed. The impugned order dated 20-06-2019 passed by the learned Additional Sessions

Judge, Gangakhed, in Criminal Misc. Application (Bail) No. 108 of 2019 is hereby quashed and set aside. The application of the appellant filed under Section 438 of Cr.P.C. for pre-arrest bail before the learned Sessions Court is hereby granted. The present appellant be released on bail in the event of his arrest in connection with Crime No. 239 of 2019 registered with Gangakhed Police Station, District Parbhani for the offence punishable under Sections 324, 323, and 504 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 the prosecution witnesses. The appellant-applicant shall attend the Police Station Gangakhed, Tahsil Gangakhed, District Parahbnai, 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.