

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

CRIMINAL APPEAL NO. 927 OF 2019

Madhukar S/o Babasaheb Bade,
Age: 40 years, Occu. Agril.,
R/o : Kasari, Taluka Dharur,
District Beed.

...APPELLANT
(Ori. Accused No.1)

VERSUS

1. The State of Maharashtra,
Through Dindrud Police Station,
District Beed.

2. Adikabai Angad Ughade,
Age: 60 years, Occu. Labour,
R/o : Kasari, Taluka Dharur,
District Beed.

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

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Mr. S.S. Jadhavar, Advocate for appellant
Mr. P.K. Lakhotiya, APP for respondent No. 1-State
Mr. Y.G. Somani, Advocate for respondent No. 2

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CORAM : K.K. SONAWANE, J.

DATE : 13th 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. 87 of 2019 registered with Dindrud Police Station, Dindrud District Beed, under Sections 143, 147, 324, 504 and 506 read with Section 149 of the Indian Penal Code (IPC) and under Sections 3(2)(va) 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 08-05-2019, complainant – Adikabai Angad Ughade, resident of Kasari, Taluka Dharur, District Beed approached to the Police of Dindrud Police Station, District Beed, and ventilated the grievance that she is residing along with sons, daughter-in-law and eking livelihood by doing labour work. It has been alleged that in the previous year the complainant had obtained advance amount of Rs. 10,000/- from Bhagwat Pandurang Bade. The person Pappu Bade had taken the guarantee of repayment of amount. Accordingly, she refunded the entire amount. The complainant further grumbled that on 08-05-2019, at about 7.00 a.m. when the complainant and her sons were present in the house, the appellant came and hurled abuses to the complainant and her son. He was saying that why they did not settle the previous dispute. The appellant assaulted the complainant with the help of wooden log and caused bleeding injury to her. Thereafter one Sushila, Ramprabhu Bhagwat, Satwashila and daughter in law of Pandurang Bade came there and assaulted the complainant. They threatened to kill her. They all hurled casteist abuses to the complainant with intention to insult and humiliate them on her caste within a public view. Therefore, she filed the report.

4. Pursuant to FIR, the Police of Dindurd Police Station registered the Crime bearing No. 87 of 2019 and set the penal law in motion. The appellant, apprehending his arrest, filed Misc. Criminal Application bearing No. 199 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 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 impugned order of rejection of 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 to wreak vengeance on account of earlier dispute. According to learned counsel, on the report of one Anita W/o Ramprabhu an offence bearing Crime No. 88 of 2019 is registered against present complainant, her husband and three sons in said Police Station. However, with an intention to give counter blow to the said crime, the present FIR came to be lodged by the present complainant. 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(2)(va) of the Act of 1989 are not attracted to the facts and circumstances of the present case. It cannot be considered that the appellant had any knowledge about the caste of first informant. Therefore, 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 and his family members are from SC/ST community. The appellant hurled casteist abuses and assaulted the complainant-first informant to humiliate and insult her within a public view. The learned trial Court rightly 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 present 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(2)(va) of the Act of 1989 against the present appellant which reads as under:

"3. Punishments for offences of atrocities :-

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe :-

[(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine.]

9. After perusal of FIR lodged against the present appellant, *prima facie*, it reveals that the ingredients of aforesaid penal provisions do not match with factual score of the present case. It is to be noted that as per Section 3 of the Act of 1989 it must be *prima facie* shown that accused is not a member of Scheduled Caste or Scheduled Tribes and alleged humiliation by way of intentional

insult or intimidation was committed in a place within public view. Moreover, the knowledge of the accused that person against whom the offence is committed is a member of Scheduled Caste or Scheduled Tribe is also an essential ingredient of the offence under the Act of 1989. The opening sentence of Sections 3(1) and 3(2) of the Act of 1989 itself shows "whoever not being a member of Scheduled Caste or Scheduled Tribe". It means that there must be *prima facie* affirmation or say in the FIR/ complaint that the accused is not the member of Scheduled Caste or Scheduled Tribe. In the present complaint, absolutely there is no averment to the effect that appellant-applicant is belonging to higher caste or at least that he is not a member of Scheduled Caste. This being main and basic ingredient of Sections 3(2)(va) and Section 3(1)(a) of the Act of 1989 and the absence of the same will have a serious impact as to the allegations to constitute offence under Act of 1989.

10. In the matter-in-hand, averments in regard to appellant that he is not the member of SC or ST community or he is belonging from higher caste, is totally absent in the alleged FIR. Moreover, there are no allegations attributed to the appellant that he had an participation in the act to hurl casteist abuses to the complainant. It would also fallacious to draw inference that the appellant had an knowledge about the caste of complainant. There was no any whisper about all these factual aspects in the FIR. Therefore, it would unsafe to fasten liability of commission of offence under Section 3(2)(va) of the Act of 1989. Therefore, statutory bar under

Section 18 of the Act, 1989, is not applicable to the facts and circumstances of the present case.

11. 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 appellants. 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 Sections 143, 147, 324, 504 and 506 read with Section 149 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. According to prosecution, the alleged incident was occurred at the house of complainant. It has not alleged that the appellant-accused after assault taken away the weapon-wooden log with him. Therefore, no question arises about recovery of weapon at the behest of appellant-accused.

However, the appellant has shown inclination to co-operate with the Investigating Officer during the course of investigation. In such circumstances, it would be justifiable to allow the bail application filed before learned trial Court on behalf of the appellant.

13. In sequel, the Criminal Appeal stands allowed. The impugned order dated 10-07-2019 passed by the learned Additional Sessions Judge, Majalgaon, in Misc. Criminal Application No. 199 of 2019 is hereby quashed and set aside. The application of the appellant filed under Section 438 of Cr.P.C. for his 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. 87 of 2019 registered with Dindrud Police Station, Dindrud, District Beed for the offence punishable under Sections 143, 147, 324, 504 and 506 read with Section 149 of the Indian Penal Code and under Sections 3(2)(va) 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 appellant-applicant shall not indulge, directly or indirectly, in any kind of activities of tampering with the evidence of the prosecution witness. The appellant-applicant shall attend the Dindrud Police Station, Dindrud, District Beed, 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.

14. Fees of the learned Advocate Mr. Somani appointed on behalf of respondent No. 2 is quantified at Rs.2000/- (Rupees Two Thousand only), which would be payable by the High Court Legal Services Authority, Sub-Committee, Aurangabad.

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

Sd./-

[K. K. SONAWANE]
JUDGE

MTK.