

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

CRIMINAL APPEAL NO. 787 OF 2018

Kiran S/o Madhukar Ingle,
Age: 38 years, Occu. Agril.,
R/o Salegaon, Tq. Kaij,
District Beed.

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

VERSUS

1. The State of Maharashtra,
Through Police Station Officer,
Police Station Kaij,
Tq. Kaij, Dist. Beed.

2. Laxman Rambhau Thorat,
Age: 30 years, Occu. Labour,
R/o: Salegaon, Tq. Kaij,
Dist. Beed.

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

...

Mr. Akash Gade, Advocate holding for
Mr. S.J. Salunke, Advocate for appellant
Smt. V.S. Chaudhary, APP for respondent No. 1-State
Mr. Suresh P. Salgar, Advocate for respondent No. 2

...

CORAM : K.K. SONAWANE, J.

**RESERVED ON : 12th FEBRUARY, 2019.
PRONOUNCED ON : 26th FEBRUARY, 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 appellant in Crime

No. 483 of 2018 registered with Kaij Police Station, Ta. Kaij, District Beed under sections 323, 506 read with section 34 of the Indian Penal Code (for short "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 or 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 08-10-2018, the complainant Laxman Rambhau Thorat resident of Salegaon, tahsil Kaij, District Beed. approached to the Police of Kaij Police Station and filed the report that appellant picked up the quarrel with him on account of payment of Rs.1,20,000/- given in advance to him. The appellant hurled the abuses in the name of his caste with intention to insult and humiliate him within public view. The appellant-accused also had an knowledge that the complainant was the member of Scheduled Caste/ Scheduled Tribes community. There are allegations about assault causing hurt and intimidation to the complainant. Pursuant to the report, the Police of Kaij Police Station registered the Crime No. 483 of 2018 and set the penal law in motion. The appellant and his accomplices apprehending their arrest, filed an application bearing Misc. Criminal Application No. 425 of 2018 under section 438 of Cr.P.C. before the learned Additional Sessions Judge,

Ambajogai. The learned Additional Sessions Judge considered the circumstances on record and allowed the application partly for anticipatory bail in respect of other two accomplices of the appellant. The learned Sessions Judge admitted the co-accused Govind Ingle and Ajay Gomade on bail, in the event of their arrest, in the present Crime. However, the learned Sessions Judge 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 impugned order of rejection of application for anticipatory bail of present appellant, is the subject-matter of present appeal.

4. Mr. Salunke, learned counsel for appellant vehemently submitted that the present appellant is innocent of the charges pitted against him. He has not committed any crime as alleged by the prosecution. He has been falsely implicated in this case. There was money transaction in between appellant and the complainant on account of agricultural operations. The appellant insisted for refund of amount paid in advance to him, but the complainant was reluctant to repay the amount. Therefore, with *malafide* intention the complainant embroiled the appellant by making false allegations in the present case. According to learned

counsel for appellant, the circumstances on record are not sufficient to make out offence under the Act of 1989. He relied upon the expositions of law delineated in the cases of *Pravin Vasantrao Tayade Vs. State of Maharashtra (Nagpur Bench) Criminal Appeal No. 644 of 2018 decided on 02-11-2018, Atendra Singh Rawat Vs. State of Madhya Pradesh. (Gwalior Bench) Criminal Appeal No. 7295 of 2018 decided on 11-10-2018, Mukesh Kumar Saini Vs. State (Delhi Administration) reported in 2002 All MR (Cri.) Journal 31, Vilas Pandurang Pawar and another Vs. State of Maharashtra and others reported in 2012 Cri.L.J. 4520, Chikkappa and others Vs. State of Karnataka, reported in 2002 Cri.L.J. 518, Shashikant Ramhari Tambe and others Vs. State of Maharashtra reported in 2008 All MR (Cri.) 2132, Sri N.B. Gungarakoppa and others Vs State of Karnataka reported in 2002 Cri.L.J. 3311, Dr. Subhash Kashinath Mahajan Vs. The State of Maharashtra and another reported in 2018 All MR (Cri.) 1773 (SC), Sattarkhan Jabbarkhan Pathan and another Vs. State of Maharashtra and ano. reported in 2018 All MR.(Cri.) 5050 and Prakash Revachand Budhrani and others Vs. State of Maharashtra and another, Criminal Appeal No. 1233 of 2018 decided on 24th October, 2018.*

5. Learned APP and learned counsel for respondent Nos. 1 & 2 raised, the objection and submitted that the section 18-A of the Act of 1989 put embargo for exercise of powers under section 438 of the Cr.P.C. by the Court. The appellant abused the complainant on his caste within public view. The circumstances reflect from the FIR are sufficient to make out the offence under

sections 3(1) (r)(s) of the Act of 1989. Therefore, application for anticipatory bail of the appellant cannot be entertained for relief as prayed on behalf of appellant. The learned APP produced the relevant documents of investigation of the crime on record for perusal.

6. 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 18-A 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 section 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.”

7. 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:

“18-A. (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.”

8. The conjoint reading of aforesaid provision of sections 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 considered 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.”

9. The learned counsel Mr. Salunke also placed reliance on the decision of 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.”

10. It would be profitable to make brief reference of few decisions wherein the various High Courts had an occasion to deal with situation for applicability of section 438 of the Cr.P.C.,

in the offences registered under the Act of 1989. In the case of ***Suresh Kumar Vs. State*** reported in **1999(1) Crimes 636**, the Madhya Pradesh High Court held that where there is no *prima facie* material on record to justify the invocation of powers under the Act of 1989, there is no bar to entertain the petition for anticipatory bail. In the case of ***Pulla Dass Vs. State of Punjab and another*** reported in **1998 Cri.L.J. 157**, the Punjab and Hariyana High Court had an occasion to come down heavily and point out that where total *malafide* and vexatious allegations are made and there was misuse of process of law apparent on the face of record, the relief of anticipatory cannot be refused. The Andhra Pradesh High Court in the case of ***K. Mallesham Vs. State of Andhra Pradesh*** reported in **1999 Cri.L.J. 324** after deep analysis of the issue concluded that mere mentioning of the provisions of Act of 1989 in the crime is not sufficient unless it is supported by reliable material to establish charges under the Act of 1989. The Delhi High Court in the case of ***Mukesh Kumar Saini and others Vs. State (Delhi Administration)*** reported in **2001 Cri.L.J. 4587** observed that the Court cannot overlooked the situation in which provision of Act of 1989 have been misused. It is also worth to mention that the Full Bench of Rajasthan High Court in the case of ***Virendra Singh Vs. State of Rajasthan*** reported in **2000 Cri.L.J. 2899** examined the legal issue in depth by referring of relevant provisions of law and

delineated that it would still permitted to entertain the application for anticipatory bail filed under section 438 of the Cr.P.C. within parameter of existence of *prima facie* case to justify the invocation of relevant provisions of law.

11. In the case of ***Pankaj Sutar Vs. State of Gujarat*** reported in ***1992(1) Crimes 1122 (Guj)*** the Court expressed the view that :

“No Court can embark upon such hazards of refusing anticipatory bail on mere doubtful accusations and assumptions that the Act is applicable and no Court could and should be permitted to be spoon-fed by the complainant whatever he wants to feed and swallow, whatever he wants the Courts to gulp down to attain and secure his unjust malafide motivated ends.”

12. The entire decisions of various High Courts and Honourable Apex Court referred above categorically demonstrate that though section 18 or newly added section 18A of the Act of 1989 creates a bar for invocation of powers under section 438 of the Cr.P.C., still it is open for both the Courts i.e. Sessions Court as well as High Courts to see whether *prima facie* case is made out or not to sustain the allegations under the Act of 1989. The Division Bench of Karnataka High Court in the case of ***Sri N.B. Gungarakoppa and others Vs. State of Karkanatka*** reported in ***2002 Cri.L.J. 3311*** elaborately discussed the provisions of section 438 of the Cr.P.C. and held that the Court

of Sessions and High Court both have concurrent jurisdiction for consideration of the application filed under section 438 of the Cr.P.C., in the offence registered under the provisions of Act of 1989.

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. At this juncture, it is to be noted that Full Bench of Rajasthan High Court in the case of **Virendra Singh Vs. State of Rajasthan** reported in **2000 Cri.L.J. 2899** had an occasion to deal with issue extensively. In paragraph No. 18, it has been

observed that :

“18. if a person is even alleged of accusation of committing an offence under the S.C. S.T. Act of 1989 the intention of Section 18 is clearly to debar him from seeking the remedy of anticipatory bail and it is only in the circumstances where there is absolutely no material to infer as to why Sec.3 has been applied to implicate a person for an offence under the Act of 1989 the Courts would be justified in a very limited sphere to examine whether the application can be rejected on the ground of its maintainability. What is intended to be emphasized is that while dealing with an application for anticipatory bail, the Courts would be justified in merely examining as to whether there is at all an accusation against a person for registering a case under Sec. 3 of the Act of 1989 and once the ingredients of the offence are available in the FIR or the complaint, the Courts would not be justified in entering into a further inquiry by summoning the case diary or any other material as to whether the allegations are true or false or whether there is any pre-ponderance of probability of commission of such an offence. Such an exercise in our view is intended to put to a complete bar against entertainment of application of anticipatory bail which is unambiguously laid down under Sec. 18 of the Act of 1989, which is apparent from the perusal of the section itself and thus the Court at the most would be required to evaluate the FIR itself with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of the ingredients constituting the alleged offence. In our opinion, the Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegation made in the FIR or the complaint by calling for the case diary, charge sheet or any other material gathered at the time of investigation but. if the allegations in the FIR or the complaint even if they are taken at their face value are accepted in their entirety do not constitute the offence alleged, it is only in those miniscule number of cases, the Courts would be justified in entertaining the application, not because it is maintainable but clearly because the Act would be inapplicable in the facts and circumstances of that particular case. Thus the application for anticipatory bail can be entertained only on the ground of inapplicability of the Act of 1989 due to the facts of the case which will have to be gathered only from the FIR and not beyond that because once it is gathered from the FIR that the applicant is an accused of committing an offence laid down under Sec.3 of the Act of 1989, the bar of Sec. 18 would instantly operate against the person who has been made an accused of the offence under the Act of 1989. To put it

differently, once it is apparent from the FIR that an offence under the Act of 1989 is even alleged, the Courts would not be justified at all in weighing or scrutinising the preponderance of the probability of commission of the offence by the accused, but if from the FIR itself the ingredients of offence as laid down under Sec.3 of the Act itself is found to be missing, the bar created by Sec.18 would not be allowed to operate against an accused and only in that event his application for anticipatory bail would be dealt with by the concerned Court to determine whether the Act of 1989 can be said to be rightly applicable against the accused and not to enter into further enquiry into the matter so as to determine whether the allegations levelled against the accused in the FIR are true or false and there would be no justification to enter into the matter further in order to examine whether the allegations levelled against the accused are even prima facie correct or incorrect.”

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.

16. In the matter in hand, the prosecution applied the

provisions of section 3(1)(r)(s) of the Act of 1989 against the present applicant 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.”

17. After perusal of the FIR lodged 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 “intimidation” 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. There must be “intentional insults” or “intimidation” with “intent” to humiliate member of Scheduled Caste and Scheduled Tribes in any place within “public view”. In the case of ***Shantabai Vs. State of Maharashtra*** reported in ***1982 Cr.L.J. 872***, it has

been 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.

18. In the matter-in-hand, it has been alleged that the appellant hurled castiest abuses as "महारणे or मांगटे" during the fight for demand of amount paid in advance to the complainant. If word "महारणे or मांगटे" are taken out from the complaint for moment then other utterances that "माझे काही वाकडे करू शकत नाहीत", perceived from the FIR though indicate "threat" or "intimidation" but does not pointer to the inference that there was any intent or *mensrea* to humiliate the complainant on his caste within public view. The allegations in the FIR in regard to assault and intimidation taking name of caste of the complainant would be at the most fall under the provisions of Indian Penal Code, with which appellant has already been charged for penal clause of causing voluntarily hurt under section 323 of the IPC and intimidation under section 506 of the IPC.

19. Taking into consideration all aspect of the matter, I am of the view that inspite 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 FIR of the case itself is as to whether *prima facie* case is made out by the complainant against appellant. I am of the opinion that the

incriminating circumstances to show that intentional insult or intimidation with intent to humiliate the complainant within public view on the part of appellant are lacking in this case. There is no impediment to arrive at the conclusion that there are no material *prima faice* on record to draw the inference that the appellant has committed offence under section 3(1)(r)(s) of the Act 1989. As such, there is no statutory bar for this Court to consider the application of the appellant filed under section 438 of the Cr.P.C. It is also required to take into consideration that other offences of I.P.C. applied against present appellant all are of bailable in nature. Therefore, there is no difficulty to allow the present appeal for the relief of anticipatory bail in favour of appellant-accused in the present crime. Hence, appeal deserves to be allowed.

20. Accordingly, the appeal stands allowed. The impugned order dated 15-10-2018 passed by the learned Additional Sessions Judge, Ambajogai, in Misc. Criminal Application No. 425 of 2018 to the extent of present appellant 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 applicant, namely, Kiran Madhukar Ingle be released on bail in the event of his arrest in connection with crime No. 483 of 2018 registered with Kaij Police Station, Tq. Kaij, District Beed for the offence punishable under sections

323, 506 read with section 34 of the IPC and section 3(1)(r)(s) of the Act of 1989, on furnishing PR bond of Rs. 25,000/- (Rupees Twenty Five 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 prosecution witness. The applicant/appellant shall attend the Police Station Kaij, tahsil Kaij, 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.

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

[K. K. SONAWANE]
JUDGE

MTK.
