

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

CRIMINAL APPEAL NO. 866 OF 2018

1. Shyam s/o. Laxman Nawale,
Age: 30 years, Occu. : Agri.,
R/o. Bhenda, Tq. Newasa,
District Ahmednagar.
 2. Nitin s/o. Laxman Nawale,
Age: 35 years, Occu. : Agri.,
R/o. Bhenda, Tq. Newasa,
District Ahmednagar.
 3. Laxman s/o. Baburao Nawale,
Age: 65 years, Occu. : Agri.,
R/o. Bhenda, Tq. Newasa,
District Ahmednagar.
- ... APPELLANTS

VERSUS

1. The State of Maharashtra,
Through Newasa Police Station,
District Ahmednagar.
 2. Shantabai w/o. Machindra Gujar,
Age: 40 years, Occu. Agri.,
R/o: Bhenda (Kh), Tq. Newasa,
District : Ahmedngar
- ... RESPONDENTS

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Mr. N. S. Ghanekar, Advocate for appellants
Smt. V. S. Choudhari, APP for respondent No. 1-State
Mr. Yunus Basheet Pathan, Advocate for respondent No.2

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CORAM : K.K. SONAWANE, J.

**RESERVED ON : 20th FEBRUARY, 2019.
PRONOUNCED ON : 06th MARCH, 2019.**

JUDGMENT :-

1. Heard. **Admit.** The matter is taken up for its finality on merit with the consent of both sides.

2. Being dissatisfied with the impugned order of rejection of application filed under section 438 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") for pre-arrest bail in crime No. 0709 of 2018 registered at Newasa Police Station, District Ahmednagar for the offence punishable under sections 143, 147, 148, 323, 324, 504 and 506 read with section 34 of the Indian Penal Code (for short "IPC") and 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 appellants preferred present appeal by invoking remedy under section 14-A(2) of the Act of 1989 to redress his grievance.

3. According to prosecution, on 04-11-2018, the complainant Shantabai W/o Machindra Gujar approached to the Newasa Police Station and filed report that she has an agricultural land within the vicinity of village Bhenda (kh) Ta. Newasa. The agricultural land of one Nitin Laxman Nawale was located abutting to her lands. There was dispute in between the complainant and adjoining land owners on account of access to her land. Now, dispute was settled amicably due to intervention by the villagers and road to egress and ingress to the land of complainant was demarcated by erecting the cement pole. However, ordeals of the complainant did not come to an end. On 03-11-2018, in the evening at about 4.00 p.m. the complainant and her mother was

busy in agricultural operation in the field. The appellant Shyam Nawale and his brother Nitin Nawale arrived near the complainant in the field and they hurled abuses on her caste by saying "*Chambhar - Chamatyaho*". The appellants assaulted complainant by iron rod. The mother and sister Sumanbai rushed to intervene in the fight. But, they were also beaten up by the appellants and other assailants and caused serious injuries to them. The assailants gave threats of life and abused the complainant on her caste. Thereafter, the complainant rushed to the Police Station and filed the report.

4. Pursuant to First Information Report, (for short "FIR") of the complainant Shantabai Gujar, Police of Newasa Police Station registered crime No. 0709 of 2018 and set the penal law in motion. The appellants apprehending their arrest in this crime, approached to the Additional Sessions Judge, Newasa and filed application under section 438 of Cr.P.C. for their pre-arrest bail in the crime. But, the learned Sessions Judge found reluctant to grant relief in favour of appellants and rejected the application. The impugned order of rejection of application bearing Criminal Misc. Application (Bail) No. 288 of 2018 rebuffing relief of pre-arrest bail is challenged in this appeal.

5. Learned counsel for the appellants vehemently submits that the appellants has not committed any crime, but he has

been falsely implicated in this case on account of dispute in regard to boundaries of agricultural land. The allegations nurtured in the FIR are totally false, baseless and fabricated one to give counter-blow to the cross-complaint filed by the appellants-herein against complainant - Shantabai and others. It has been alleged that on the date of incident i.e. 03-11-2018, the complainant Shantabai attacked the appellants and dealt a blow of spade on the head of the appellant-Shyam. There was bleeding injuries caused to the appellant-Shyam and he became unconscious. He was escorted to the Civil Hospital, Ahmednagar for medical treatment. The Police recorded the cause of injuries of the appellant - Shyam in his statement. The appellants blamed complainant - Shantabai and others for serious injuries caused to him. According to appellants, Newasa Police Station registered the Crime No. 711 of 2018 against complainant Shantabai and others. The complainant taking umbrage of the same filed the present FIR against appellants, with an intention to give counter-blow to the criminal case filed by the appellants. The learned counsel for the appellants submit that appellant- Shyam was hospitalized for his injuries. The allegations nurtured in the FIR are not sufficient to constitute the offence under the Act of 1989. Therefore, there is no impediment to entertain the application for anticipatory bail under section 438 of Cr.P.C. The custodial interrogation of the appellants is not necessary in the crime.

There is no recovery from the appellants for the sake of investigation. They are ready to abide the conditions, if any, imposed on them. They also ready to co-operate the Investigating Officer for the purpose of investigation. The learned counsel for appellants requested to allow the present appeal and appellants be released on anticipatory bail.

6. Learned APP raised objection and submits that Section 18A of the Act of 1989 put embargo on the Court for exercising powers under section 438 of the Cr.P.C. The appellants committed crime against person, who is a member of Scheduled Caste community. The appellants and their accomplices are aware that victim Shantabai was from "Chambhar" community. Therefore, the application for relief under Section 438 of Cr.P.C. cannot be entertained for anticipatory bail prayed on behalf of appellants. The circumstances reflect from the FIR are sufficient to make out the offence under sections 3(1)(r) (s) of the Act of 1989. Learned APP produced on record the relevant documents of investigation of the crime for perusal.

7. It is to be noted that this Court in the decision of Criminal Appeal No. 787 of 2018 (***Kiran Madhukar Ingle Versus State of Maharashtra and another***), elaborately dealt with the issue of applicability of Section 18 of the Act of 1989 to entertain the application for pre-arrest bail under Section 438 of the Cr.P.C.

and made observations in paragraph Nos. 13 and 15 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 instant appeal, the prosecution applied the provisions of section 3(1)(r)(s) 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 :-

(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. After perusal of the FIR lodged against the present appellants, *prima facie* it 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 *mens rea* 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.

10. In the matter in hand, it has been alleged that appellants - hurled abuses in the name of caste of first informant by uttering words "*Chambhar -Chamatyaho*" during altercation occurred on the day of incident. If words "*Chambhar -Chamatyaho*" are taken out from the complaint for moment then other utterances "*तुम्हाला आमचे शेजारी राहू देणार नाही*" "*माजलेले आहेत*" perceived from the FIR though indicate "threat" or "intimidation" but does not pointer to the inference that there was any intent or *mens rea* to humiliate the complainant on her caste within public view. Moreover, the incident occurred in the field of the complainant. Therefore, the allegation that "intent" to "humiliate" a complainant being member of Scheduled Castes in a place within "Public view", *prima facie* found incredulous and dubious one. The accusation in regard to assault and intimidation by taking name of caste of complainant would be at the most fall under the Indian Penal Code.

11. Taking into consideration all aspect of the matter, I am of the view 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 FIR of the case itself is as to whether *prima facie* case is made out by the complainant against appellants. I am of the opinion that the material circumstances to prove the intentional insult or

intimidation with intent to humiliate the complainant within public view on the part of appellants 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 appellants have 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 applications of the appellants filed under section 438 of the Cr.P.C.

12. It is also required to take into consideration that the other offences of IPC. applied against present appellants all are of bailable in nature except Section 324 of the IPC. It is rather doubtful as to hold the weapon like rod used by appellants, as a dangerous weapon or means. I find that the custodial interrogation of appellants is not necessary in this case for the sake of investigation. There is also no possibility of absconding of the accused in this crime. So far as the apprehension of tampering with the evidence of prosecution is concerned, the requisite conditions would be imposed on the appellants. In the result, I have no hesitation to allow the present appeal for the relief of anticipatory bail in favour of appellants-accused in the present crime. Hence, appeal deserves to be allowed.

13. In sequel, the appeals stand allowed. The impugned orders dated 28-11-2018 passed by Additional Sessions Judge,

Newasa in Criminal Misc. Application No. 288 of 2018 filed by the appellants is hereby quashed and set-aside. The application of the appellants-applicants filed under Section 438 of the Cr.P.C. for their pre-arrest bail before the learned trial Court is hereby allowed. The appellants, namely, (1) Shyam Laxman Nawale, (2) Nitin Laxman Nawale and (3) Laxman Baburao Nawale be released on bail, in the event of their arrest, in connection with Crime No. 0709 of 2018 registered at Newasa Police Station, for the offence punishable under sections 143, 147, 148, 323, 324, 504 and 506 read with section 34 of the Indian Penal Code (IPC) and 3(1) (r) (s) of the, on furnishing PR bond of Rs.15,000/- (Rupees Fifteen Thousand) with one solvent surety of like amount each. It is stipulated that appellants-applicants shall not indulge, directly or indirectly, in any kind of activities of tampering with the evidence of prosecution witness. The appellants/applicants shall attend the Newasa Police Station, District Ahmednagar, on every Sunday in between 11.00 a.m. to 3.00 p.m. till filing of the charge-sheet and shall co-operate with the Investigating Officer for the sake of investigation into the crime. Inform the concerned Investigating Officer accordingly.

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

[K. K. SONAWANE]
JUDGE