

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

CRIMINAL APPEAL NO. 942 OF 2018

1. Kedarsingh Dharma Patil,
Age: 76 years, Occu. Agri.,
R/o : Village Umberkhed,
Tal. Chalisgaon, Dist-Jalgaon.
 2. Bablu @ Vinod Subhash Patil,
Age: 32 years, Occu. Agri.,
R/o : Village Umberkhed,
Tal. Chalisgaon, Dist-Jalgaon.
- ...APPELLANTS

VERSUS

1. The State of Maharashtra,
Through Police Inspector,
Mehunbare Police Station,
Dist.: Jalgaon
 2. Sakhubai Gopinath Sonwane,
Age: Major, Occu.: Labour,
R/o: Kalbhairav Temple Area,
Village Umberkhed, Tal. Chalisgaon,
Dist- Jalgaon.
- ...RESPONDENTS

...

Mr. D.B. Thoke, Advocate for appellants
Smt. V. S. Chaudhary, APP for respondent Nos. 1-State
Mr. Vilas Giri, Advocate holding for
Mr. C.V. Dharukar, Advocate for respondent No. 2

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CORAM : K.K. SONAWANE, J.

**RESERVED ON : 8th FEBRUARY, 2019.
PRONOUNCED ON : 5th MARCH, 2019.**

JUDGMENT :-

1. Heard. **Admit.** The appeal is taken up for final hearing on merit with the consent of both parties.

2. Present appeal is directed against the impugned order of rebuffing the relief of pre-arrest bail of the appellants in Crime No. 120 of 2018 registered with Mehunbare Police Station, District Jalgaon under Section 3(1)(r)(s), 3(2)(va) and 3(1)(g) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter, referred to as "Act of 1989" for the sake or brevity) and under Section 143, 147, 294, 427 read with section 149 of the Indian Penal Code (for short "IPC"). The appellants preferred 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 03-11-2018, the complainant Sakhubai Gopinath Sonwane visited the Police of Mehunbare Police Station and ventilated the grievance that she accompanied with son Prakash, daughter-in-law Vithabai and grandsons, all were residing since long on Gaothan Land of village Umbarkhed by erecting shanty. There were huts of other members of *Bhill* community adjoining to her shanty. All were eking livelihood by doing labour work of harvesting sugarcane crop. It has been alleged that on 27-10-2018 at about 10.00 a.m. when complainant Sakhubai Sonwane and her son Prakash and other members of her family were at home that time Sarpanch Kedarsingh Dharma Patil and Deputy Sarpanch Bablu Subhash Patil along with three persons arrived near the shanty of complainant. The appellant Kedarsing asked

the complainant to vacate the huts, as they wanted to clean the premises for fair of God '*Bhairvnath*'. There was altercation in between the appellants and complainant as well her son Prakash. In the fight, appellants hurled the castiest abuses by saying "*भिलटया*". The appellants also abused the complainant filthily by uttering words "*जाय व रंड, गधडी तुले जठे जावानं शे तठे जाय*" (you "*रंड*" and "*गधडी*" go wherever you want to go). The appellants also caused destruction to the trees planted backside of the shanty of complainant by JCB machine. Appellants destroyed the hut of one Babu Pawar, erected nearby the shanty of complainant. There were no co-operation to the complainant from the Grampanchayat authority. After consultation with credible persons from the village, she approached to the Police and filed the complaint for penal action against the miscreants.

4. Pursuant to FIR of Sakhubai Sonwane, Police of Mehunbare Police Station registered the Crime No. 120 of 2018 for the offence punishable under Sections 3(1)(r)(s), 3(2)(va) and 3(1)(g) of the Act of 1989 as well as under Section 143, 147, 294, 427 read with section 149 of the IPC, and set the penal law in motion. The appellants, apprehending their arrest in the present crime, filed the application for their pre-arrest bail bearing Criminal (Bail) Application No. 770 of 2018 under Section 438 of the Code of Criminal Procedure, 1973 (Cr.P.C.) before the

learned Additional Sessions Judge, Jalgaon. But, learned Additional Sessions Judge found reluctant to favour the applicants-appellants for grant of relief of their pre-arrest bail by invoking remedy under Section 438 of the Cr.P.C. being an crime registered under the Act of 1989. Eventually, learned Additional Sessions Judge rejected the application of appellants for anticipatory bail and passed the impugned order, the validity, propriety and correctness of which is agitated in the present appeal.

5. Mr. Thoke, learned counsel for the appellants vehemently submitted that the appellants are falsely implicated in this case on account of political rivalry in the village. They have not committed any crime as alleged by the prosecution. But, the present complaint is false, fabricated and filed with purported motive. Mr. Thoke, learned counsel for the appellants explained that there was religious fair on account of God '*Kalbhairav*' scheduled to be held in between 29-11-2018 and 30-11-2018 near the temple situated in village Umbarkhed, Taluka Chalisgaon. Many of the villagers and devotees used to visit fair for glimpse of God '*Kalbhairav*'. There was meeting of Grampanchayat for resolution to remove encroachment on the Gavthan area nearby the temple of God '*Kalbhairav*' and get it clean for gathering of devotees on account of fair. Therefore, Grampanchayat authority, taking recourse of Section 53 of the

Bombay Village Panchayat Act, issued notices to the villagers, who occupied the Gavthan area by erecting their huts. The assurance for alternate accommodation was also given to the encroacher as per the Government Scheme known as '*Gharkul Yojna*'. But, there were obstacles on the part of encroacher, therefore, panchnamas were drawn to that effect by the office bearers of Grampnchayat. After negotiation, once again notices were given to the complainant and others, and they agreed to remove their encroachments. But, lateron, the hut of the complainant caused damaged while removing trees from the Gavthan area. According to learned counsel, there were no any castiest abuses nor any threat or intimidation to the complainant. But, the false complaint is being filed against the appellants. The allegations would not attract the provisions under the Act of 1989. Therefore, he requested to entertain the appeal and grant the relief of pre-arrest bail to the appellants in this case.

6. Learned APP for respondent No.1 and learned counsel appearing on behalf of respondent No.2 vociferously raised objections and submitted that Section 18A of the Act of 1989 put statutory bar for exercising the powers under Section 438 of the Cr.P.C. by the Court. The appellants abused the complainant on their caste within a public view. The circumstances reflect from the FIR are sufficient to draw the inference that appellants committed an offence under the Act of 1989. They intentionally

insulted and intimidated the complainant and her son Prakash with intent to humiliate them within public view as they are the members of Scheduled Tribe. The appellants had knowledge that complainant and her family members all are belonging to *Bhil* community recognized as Scheduled Tribe. The appellants attempted to dispossess the complainant and her family members, who are the members of Scheduled Tribe, wrongly from the Gavthan land and caused interference in their rights of enjoyment as well as caused damaged to the trees.

7. In support of oral submissions, learned counsel for respondent No.2 produced written notes of arguments as well as placed his reliance on the expositions of law laid down in the cases – [1] *State of M.P. And another Versus Ram Kishna Balothia and another*, reported in (1995) 3 Supreme Court Cases 221, [2] *Vilas Pandurang Pawar and another Versus State of Maharashtra and others*, reported in (2012) 8 Supreme Court Cases 795, [3] *Manju Devi Versus Onkarjit Singh Ahluwalia Alias Omkarjeet singh and others*, reported in, (2017) 13 Supreme Court Cases 439, [4] *Niyas P.A., S/o. Ashraf Versus State of Kerala*, reported in, 2017 SCC Online Ker 21698, [5] *Balraje @ Raviraj Vithal Gate Versus The State of Maharashtra and another* [Criminal Appeal No. 456 and 457 of 2018, decided on 4th October, 2018], [5] *Gyan Singh Versus The State of Madhya Pradesh* [CRA-8349 of 2018, decided on 30-11-2018] and

[6] *Suresh Pratap Singh @ Bande Singh Versus The State of M.P.*

[Cr.A.No. 9530 of 2018, decided on 07-01-2019].

8. 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.

9. In the instant appeal, the prosecution applied the provisions of Sections 3(1)(r)(s), 3(2)(va) and 3(1)(g) of the Act of 1989 against the present appellants which read 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."

"3. Punishments for offences of atrocities :-

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

(i) xxxxxxxx to

(v) xxxxxxxx

(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 offence and shall also be liable to fine."

3. *Punishments for offences of atrocities :-*

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

(g) *wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights, including forest rights, over any land or premises or water or irrigation facilities or destroys the crops or takes away the produce therefrom.*

Explanation. - For the purposes of clause (f) and this clause, the expression "wrongfully" includes -

(A) *against the person's will;*

(B) *without the person's consent;*

(C) *with the person's consent, where such consent has been obtained by putting the person, or any other person in whom the person is interested in fear or of hurt; or*

(D) *fabricating records of such land;"*

10. After perusal of the FIR lodged against the present appellants, *prima facie* reveals that the ingredients of aforesaid penal provisions do not match with the factual score of the present case. The basic ingredients of Sections 3(1)(r)(s), 3(2)(va) and 3(1)(g) of the Act of 1989, 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.

11. In the matter-in-hand, it has been alleged that appellants hurled castiest abuses as "भिलटया", during altercation on account of eviction of complainant from Gavthan land. If word "भिलटया" is taken out from the complaint for a moment then other utterances that, "जाय व रांड, गधडी तुले जठे जावानं शे तठे जाय" or "जायरे गधडीना" 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 and her son Prakash, on their caste within public view. The allegations of filthy abuses on the part of appellants by saying "जाय व रांड, गधडी तुले जठे जावानं शे तठे जाय" appears the dialogue in dialect i.e. "Ahirani" language generally spoken in *Khandesh* region mostly in Bhil community, the meaning thereby can be inferred that while reprimanding the complainant, in abusive words the appellants gave threats to the complainant that she may go anywhere as she wants to go. These allegations in the FIR in regard to assault and intimidation taking name of caste of the complainant as "भिलटया" would be at the most fall under the provisions of IPC and not within the ambit of the Act of 1989.

12. Moreover, as per Section 3 of the Act of 1989, it must

be *prima facie* shown that the accused is not a member of Scheduled Caste or Scheduled Tribes and alleged humiliation by way of intentionally insult or intimidation was committed in a place within public view. The opening sentence of Section 3(1) and 3(2) of the Act of 1989 itself shows, "Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe". It means that there must be *prima facie* affirmation or say in the FIR/complaint that the accused are not members of Scheduled Caste or Scheduled Tribes. In the present FIR, absolutely there is no averment to the effect or whisper that the appellants belong to higher caste or at least they are not members of Scheduled Caste or Scheduled Tribe. This being main and basic ingredient of Sections 3(1)(r)(s), 3(2)(va) and 3(1)(g) 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. Therefore, statutory bar under Section 18 of the Act, 1989, is not applicable to the facts and circumstances of the present case.

13. Taking into consideration all aspects of the matter and in spite of bar under Section 18 of the Act, 1989, for invocation of power under Section 438 of the Cr.P.C., it is still open to this Court to find out looking to the FIR of the case itself as to whether *prima facie* case is made out by the complainant against the appellants. The circumstances on record as referred

above are not sufficient to arrive at the conclusion that there are material *prima facie* on record to draw adverse inference against the appellants for the offence under the Act of 1989. Therefore, there is no impediment to entertain the application of appellant for the relief of their pre-arrest bail under Section 438 of Cr.P.C.

14. In regard to offence under the IPC applied for the charges of rioting, causing damage to the property, etc., I find that custodial interrogation of the appellants-applicants is not necessary 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. The charges of IPC applied in this matter all are of the offences bailable in nature. There is also inordinate delay in lodging the FIR, which would cause serious flaws in the allegation nurtured on behalf of prosecution. Therefore, there is no impediment to allow the application of appellants filed under Section 438 of the Cr.P.C. for their pre-arrest bail in this crime. The learned Sessions Judge failed to appreciate the factual aspects of the matter in proper manner within ambit of law and passed the impugned order which is erroneous, illegal and not as per the provisions laid down under the law. Therefore, the impugned order deserves to be quashed and set-aside. In the

result, there is no difficulty to allow the present appeal for the relief of pre-arrest bail of the appellants as prayed in this crime.

15. In sequel, the appeal stands allowed. The impugned order dated 06-12-2018 passed by the learned Additional Sessions Judge, Jalgaon, in Criminal Bail Application No. 770 of 2018 is hereby quashed and set-aside. The application of the appellants filed under Section 438 of the Cr.P.C. for their pre-arrest bail before the learned trial Court is hereby allowed. The appellants- (1) Kedarsingh Dharma Patil and (2) Bablu @ Vinod Subhash Patil in present appeal be released on bail in the event of their arrest in connection with Crime No. 120 of 2018 registered at Mehunbare Police Station, Taluka Chalisgaon, District Jalgaon, for the offence punishable under Sections 3(1)(r)(s), 3(2)(va) and 3(1)(g) of the Act of 1989 and under Section 143, 147, 294, 427 read with section 149 of the IPC, on furnishing PR bond of Rs.25,000/- 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 Mehunbare Police Station, Taluka Chalisgaon, District Jalgaon, 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.

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

Sd/-

[K. K. SONAWANE]
JUDGE

MTK.