

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

CRIMINAL APPEAL NO. 05 OF 2019

1. Krishna S/o Parmeshwar Gaikwad,
Age: 18 years, Occu. Education,
R/o : Lad Nandra, Tq. Sailu,
Dist. Parbhani
At present R/o Shrikrishna Nagar,
Khanapur Phata, Parbhani,
Tq. & Dist. Parbhani. ...APPELLANT

VERSUS

1. The State of Maharashtra,
Through New Mondha Police Station,
Parbhani, Tq. & Dist. Parbhani.
2. Kamlesh S/o Sukhdev Sable,
Age: 18 years, Occu. Education,
R/o: Gadadegavan Wadi, Tq. Jintur,
District : Parbhani ...RESPONDENTS

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Mr. S.K. Chavan, Advocate for appellant
Smt. D.S. Jape, APP for respondent No. 1-State

...
**WITH
CRIMINAL APPEAL NO. 943 OF 2018**

Aniket S/o Vitthalrao Bhosale,
Age:-20 years, Occ. Education,
R/o : Chondi (Amba), Tq. Basmath
Dist.: Hingoli ...APPELLANT

VERSUS

1. The State of Maharashtra,
Through Sub Police Inspector,
New Mondha Police Station at Parbhani,
Tq. & Dist. Parbhani.
2. Kamlesh S/o Sukhdev Sable,
Age: 18 years, Occ. Education,
R/o: Gadadgavan Wadi, Tq. Jintur,
Dist. Parbhani.
At present R/o C/o Sanjay Sing Thakur,
Sneha Nagar Parbhani. ...RESPONDENTS

...
WITH
CRIMINAL APPEAL NO. 944 OF 2018

Nandkishor S/o Vithal Mutkule,
 Age:-20 years, Occ. Education,
 R/o : Adgaon, Tq. & Dist. Hingoli.

...APPELLANT

VERSUS

1. The State of Maharashtra,
 Through Sub Police Inspector,
 New Mondha Police Station at Parbhani,
 Tq. & Dist. Parbhani.
2. Kamlesh S/o Sukhdev Sable,
 Age: 18 years, Occ. Education,
 R/o: Gadadgavan Wadi, Tq. Jintur,
 Dist. Parbhani.
 At present R/o C/o Sanjay Sing Thakur,
 Sneha Nagar Parbhani.

...RESPONDENTS

...
 Mr. R.J. Nirmal, Advocate for appellants
 Smt. D.S. Jape, APP for respondent No. 1-State
 ...

CORAM : K.K. SONAWANE, J.

RESERVED ON : 12th FEBRUARY, 2019.
PRONOUNCED ON : 27th FEBRUARY, 2019.

JUDGMENT :-

1. Heard. **Admit.** These three appeals are taken up for final hearing on merit with the consent of both sides.
2. These appeals are directed against the impugned common order passed by the *Ad-hoc* Additional Sessions Judge, Parbhani in Misc. Criminal Application No. 671, 674 and 677 of 2018 filed by the appellants for the relief of their pre-arrest bail under

section 438 of the Code of Criminal Procedure (for short "Cr.P.C.") in crime No. 130 of 2018 registered at New Mondha Police Station, Parbhani under sections 324, 504 and 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 appellants invoking remedy under section 14-A(2) of the Act of 1989 preferred these appeals to redress their grievances.

3. The factual aspects which led to the prosecution of appellants / applicants in brief are that, the first informant Shri Kamlesh Sukhdeo Sable, aged 18 years old resident of Parbhani filed the report on 20-05-2018 to the Police of New Mondha Police Station, Parbhani and ventilated the grievances that on 19-05-2018 at about 7.45 p.m. he had left his friend Prajawal Rathod at room and while returning to his room, the appellants trio accosted him in the open space nearby the shop by name Vishnavi Xerox. The appellant Aniket started reprimanding him for not attending the College and examination. The first informant replied him in somewhat arrogant manner. The appellant- Aniket taking umbrage of the same, caught hold the collar of his shirt and hurled abuses filthily by uttering the word "*Adhiwasi*" at his caste. He started giving slaps and fist blows. The other accomplices i.e. appellant Krishna Mutkule removed

the belt from waist and started assaulting the complainant with belt on his chest, back etc. Meanwhile, the on-lookers Harshawardhan Jadhav, Ajay Sakhakarkar intervene in the fight and extricated the complainant from the clutches of appellants. There was threats of life given to the complainant by the accused. Thereafter, the injured complainant was escorted to the Hospital for medical treatment.

4. Pursuant to the FIR of the Kamlesh Sable, the Police of New Mondha Police Station, Parbhani registered the crime No. 130 of 2018 under sections 324, 504 and 506 read with section 34 IPC and under section 3(1) (r) (s) of the Act of 1989 and swung into action. The appellants have an apprehension that they may be arrested in the crime. Therefore, apprehending arrest by the Police, the appellants rushed to the Court of Additional Sessions Judge, Parbhani and filed the applications bearing Misc. Criminal Application (Bail) Nos. 671, 674 and 677 of 2018 for relief of anticipatory bail under section 438 of the Cr.P.C. However, the learned Sessions Judge did not give response to the application for pre-arrest bail of appellants and rejected all the applications under the impugned order, which is the subject-matter of present appeals.

5. Learned respective counsel Mr. Chavan and Mr. Nirmal appearing for the appellants vehemently submit that the

appellants are students and taking education in Agricultural College. They have also no concerned at all with alleged crime but they are falsely implicated in this case. Learned Sessions Judge did not appreciate the circumstances on record in its proper perspective. In view of nature of allegations, there is no necessity of custodial interrogation of the appellants for investigation purpose. The circumstances on record are not sufficient to constitute the offence under Act of 1989, therefore, bar under section 18 of the Act of 1989 cannot be invoked in this case. There is no possibility of tampering with the evidence of prosecution. The appellants are resident of Parbhani District and they are ready to abide the condition, if any, imposed on them. Hence, respective learned counsel for the appellants requested to grant relief of pre-arrest in favour of the appellants.

6. Learned APP for respondents raised objection and submits that the section 18-A of the Act of 1989 put embargo on the Court for exercising powers under section 438 of the Cr.P.C. The appellants abused the complainant on his caste within public view. The circumstances reflect from the FIR are sufficient to make out offence under sections 3(1)(r)(s) of the Act of 1989. Therefore, application for anticipatory bail of the appellants cannot be entertained. The 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 appeals, 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 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. In the matter in hand, it has been alleged that appellant - Aniket hurled abuses in the name of caste of first informant by uttering word "Adiwasi". If word "Adiwasi" is taken out from the complaint for moment then other utterances 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 of threat or intimidation would be at the most fall under the Indian Penal Code.

10. 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 incriminating circumstances to show that 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. It is also required to take into consideration that other offences of I.P.C. applied against present appellants all are of bailable in nature except Section 324 of the IPC. It is rather doubtful as to hold the belt weapon used by appellant, as a dangerous weapons or means. Moreover, there are simple injuries caused to first informant. Therefore, custodial interrogation of appellant 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. In the result, there is no difficulty to allow the present appeals for the relief of anticipatory bail in favour of appellants-accused in the present crime. Hence, appeals deserve to be allowed.

11. In sequel, the appeals stand allowed. The impugned orders dated 11-12-2018 passed by *Ad-hoc* Additional Sessions Judge, Parbhani in Misc. Criminal Applications No. 671, 674 and 677 of 2018 filed by the appellants are hereby quashed and set-aside. The applications of the appellants-applicants filed under

Section 438 of the Cr.P.C. for their pre-arrest bail before the learned trial Court are hereby allowed. The appellant- Krishna S/o Parmeshwar Gaikwad, in Criminal Appeal No. 05 of 2019, appellant- Aniket S/o Vitthalrao Bhosale in Criminal Appeal No. 943 of 2018 and appellant – Nandkishor S/o Vitthal Mutkule in Criminal Appeal No. 944 of 2018 be released on bail in the event of their arrest in connection with Crime No. 130 of 2018 registered at New Mondha Police Station, Parbhani, for the offence punishable under sections 324, 504 and 506 read with section 34 of the IPC as well as 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 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 New Mondha Police Station, Parbhani, 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.

13. The present Criminal Appeals stand disposed of in above terms. No order as to costs.

[K. K. SONAWANE]
JUDGE