

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

CRIMINAL APPEAL NO. 24 OF 2021

Abdullah Mohammed Al-Amodi @ Abu Chouse **...Appellant**

Versus

The State of Maharashtra & Anr. **...Respondents**

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Shri. V. D. Sapkal, Sr. Advocate h/f Shri. Khizer Patel, Advocate for the appellant

Shri. S. G. Sangle, APP for respondent No. 1

Shri. V. B. Kulkarni, Advocate for respondent No. 2

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**CORAM : RAVINDRA V. GHUGE
AND
B. U. DEBADWAR, JJ.**

DATE : 17th FEBRUARY, 2021

PER COURT : -

1. By this appeal, the appellant namely Abdullah Mohammed Al-Amodi @ Abu Chaus, accused no. 3 in FIR No. 0435 of 2020 registered on 04.10.2020, prays for anticipatory bail. His application before the trial Court bearing No. 1681/2020, has been rejected by the impugned order dated 16.12.2020.

2. We have considered the strenuous submissions of Shri. Sapkal, the learned Senior Advocate on behalf of the appellant, the learned Prosecutor on behalf of the State and Shri. Kulkarni,

learned Advocate representing the informant. With their assistance, we have gone through the record available and the charge-sheet along with its enclosures.

3. The appellant has placed reliance upon the judgment delivered by the Hon'ble Apex Court in **Bharat Chaudhary and another v State of Bihar and another**, AIR 2003 SC 4662 and a recent judgment delivered by the Hon'ble Apex Court dated 05.11.2020 in Criminal Appeal No. 707 of 2020 preferred by **Hitesh Verma against the State of Uttarakhand and another**. Respondent No. 2 has relied upon the judgment delivered by the Hon'ble Apex Court in the matter of **Prathvi Raj Chauhan Vs. Union of India (UOI) and Ors.**, AIR 2020 SC 1036 and the judgment delivered by the learned Single Judge of this Court in Criminal Appeal No. 1148 of 2019, dated 02.06.2020, filed by **Shobeb Salauddin Thakur Vs. State of Maharashtra**.

4. Considering that the informant has preferred the FIR against, about, 21 to 22 persons, we are adverting to the contents of the FIR to the extent of the appellant-accused no. 3 as under : -

(a) It is the complaint of the informant that the appellant had called her on her cell number on 03.10.2020 at

about 05:42 pm and had abused her in the most foul and filthy language, which cannot be reproduced in this order. He had also abused her by making attributes to her scheduled tribe. On the pretext of a civil dispute between the parties, while abusing her, he also threatened that he would kidnap her.

- (b) At about 06:00 pm on the same date, the son of the appellant, accused no. 5, had also called the informant on her cell phone and had abused her in foul and filthy language.
- (c) The informant accompanied by her husband and other members of the family had approached the Partur Police Station for registering an offence. As there was a large crowd near the Police Station and it was getting late, that they decided to return to their residence in their Scorpio vehicle bearing registration No. MH-20/DJ-1765.
- (d) As they reached the road towards the Government Hospital at Lendi Nala Partur at around 08:00 pm, an auto-rickshaw suddenly blocked their path. As their

vehicle stopped, about 21 to 22 persons, 4 of whom are mentioned in the FIR, came out of the surrounding bushes and attacked the informant and her family members with iron rods, hockey sticks, knives and stones. Specific allegations have been made in the FIR and as against the present appellant, it is alleged that he had used an iron rod to break the window panes and the windscreen of the vehicle, which injured some family members. After inflicting such damage, the appellant has physically attacked the informant and has snatched Rs. 65,000/- (Rupees Sixty Five Thousand) from her. These assailants ran away after noticing the arrival of a police vehicle.

- (e) The informant, therefore, reached the police station and her statement was recorded in the wee hours of 04.10.2020, in between 01:25 am to 01:49 am. The crime was registered on 04.10.2020 at about 07:00 pm.

5. The learned Senior Counsel has contended that the appellant is about 75 years of age. Based on the FIR, statements of the vehicle driver of the informant and her family members viz.

Siddheshwar Prabhakar Raut, Pushpabai Narayan Chavan, Shankar Baburao Kale, Lalita Kathalu Chavan and Baburao Annasaheb Kale, have been recorded under Section 161 of the Code of Criminal Procedure. In none of these statements, anyone has mentioned the specific name of the present appellant. This clearly indicates that the appellant has been falsely implicated. Being 75 years of age, it would be impossible for him to commit the acts that have been attributed to him in the FIR.

6. The learned Senior Advocate has submitted that the law laid down in **Bharat Chaudhary** (supra), would be applicable to this case and the bar of Section 18 with regard to Section 438 of the Cr.P.C. would not apply to the case of the appellant. This Court can exercise its inherent powers and grant anticipatory bail to the appellant.

7. He further places reliance upon **Hitesh Verma** (supra), wherein the judgment in **Prathvi Raj Chauhan** (supra) has been considered. The powers of this Court enshrined under Section 438 of the Cr.P.C. for granting anticipatory bail, can be exercised even in cases covered by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

8. The learned Prosecutor and the learned Advocate representing respondent No. 2 (informant) submit that, the informant has suffered a physical attack on her person at the hands of the appellant, besides the iron rod that he has used while damaging the car. He has stolen Rs. 65,000/- from the informant. It was a matter of fortune that a police vehicle was approaching and these assailants ran away from the scene. The custodial interrogation of the appellant is necessary and the amount of Rs. 65,000/-, which he has robbed from the informant, needs to be recovered.

9. It is then submitted, by placing reliance upon **Prathvi Raj Chauhan** (supra), that if a case is made out against the accused covered by the provisions of the 1989 Act, the bar of Section 18 would apply to this case and the prayer for anticipatory bail will have to be rejected.

10. We find that the name of the appellant is specifically mentioned at sr. no. 3 in the list of accused persons. The manner in which he had attacked the informant and her family members with ferocity, are vividly described in the FIR. The appellant had attacked the informant and had robbed Rs. 65,000/-. In the face of these

allegations, we would be precluded from assessing the evidence available against the accused in the light of the law laid down by the Hon'ble Apex Court in the matter of **Vilas Pandurang Pawar and another Vs. The State of Maharashtra and others**, (2012) 8 SCC 795 wherein the Hon'ble Apex Court has held in paragraph no. 10 as under : -

“10. 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 an 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. The 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 easily brushed aside by elaborate discussion on the evidence.”

11. In **Shakuntla Devi v. Baljinder Singh**, (2014) 15 SCC 521,

the Hon'ble Apex Court has held in paragraph no. 4 as under : -

“4. The High Court has not given any finding in the impugned order that an offence under the aforesaid Act is not made out against the respondent and has granted anticipatory bail, which is contrary to the provisions of Section 18 of the aforesaid Act as well as the aforesaid decision of this Court in Vilas Pandurang Pawar case, (2012) 8 SCC 795. Hence, without going into the merits of the allegations made against the respondent, we set aside the impugned order of the High Court granting bail to the respondent.”

12. While considering an application for anticipatory bail, we are not required to assess as to whether the allegations levelled against the accused in the FIR could eventually be proved in trial. We would have to *prima-facie* assess as to whether the appellant has played a role in the commission of the crime, whether his detention is necessary for interrogation and whether the investigating authorities will have to recover weapons or as like in the present case, alleged stolen money. If custodial detention is necessary to investigate into the crime, the request for anticipatory bail would not deserve consideration. *Prima-facie*, a case u/s 3(2)(va) of the 1989 Act is made out against the Appellant.

13. In view of the above, we find that the present appeal is devoid of merits and the trial Court has not committed any error in refusing anticipatory bail to the appellant. As such, this appeal is dismissed.

[B. U. DEBADWAR]
JUDGE

[RAVINDRA V. GHUGE]
JUDGE