



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO.464 OF 2023

WITH

CRIMINAL APPEAL NO.475 OF 2023

CRIMINAL APPEAL NO.464 OF 2023

1. Punjabrao Wasudeo Kokate
Age about 52 years,
Occupation - Agriculture
 2. Kishor Trambak Kokate
Age about 41 years,
Occupation – Agriculture
 3. Haridas Vishwanath Kokate
Age about 57 years,
Occupation – Agriculture
 4. Balu @ Ramesh Wasudeo Kokate
Age about 55 years,
Occupation – Agriculture
 5. Madhukar Jagganath Kokate
Age about 73 years,
Occupation – Agriculture
 6. Lokesh Shrikrishna Kokate
Age about 24 years,
Occupation – Agriculture
 7. Gaurav Mahadeo Kokate
Age about 22 years,
Occupation – Agriculture
- All R/o. Warud, Taluka Khamgaon,
District Buldhana

...APPELLANTS

VERSUS

1. State of Maharashtra,
through PSO of PS Khamgaon (Rural),
Tq. Khamgaon, District Buldhana
2. Lalita Bhimrao Sonawane
Age about 60 years,
R/o. Warud, Gram Panchayat Warud,
Tq. Shegaon, District Buldhana

...RESPONDENTS

CRIMINAL APPEAL NO.475 OF 2023

1. Eknath Ramdas Kokate
Age about 41 years,
Occupation - Agriculture
2. Maroti Wasudeo Kokate
Age about 50 years,
Occupation – Agriculture
3. Vickky @ Rushikesh Punjabrao Kokate
Age about 28 years,
Occupation – Agriculture

All R/o. Warud, Taluka Khamgaon,
District Buldhana

...APPELLANTS

VERSUS

1. State of Maharashtra,
through PSO of PS Khamgaon (Rural),
Tq. Khamgaon, District Buldhana
2. Lalita Bhimrao Sonawane
Age about 60 years,
R/o. Warud, Gram Panchayat Warud,
Tq. Shegaon, District Buldhana

...RESPONDENTS

Mr. J.B. Gandhi, Advocate for the appellants.
Mr. N.R. Rode, APP for respondent No.1/State.
Mr. S.G. Joshi, Advocate (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : DECEMBER 18, 2023.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel for the parties.

2. By these appeals, the appellants have challenged the order dated 28/06/2023 passed by the Special Court in Criminal Bail Application No. 172 of 2023 by which the Special Judge, Khamgaon has rejected the anticipatory bail application of the present appellants.

3. The appellants are apprehending arrest at the hands of police as crime is registered against them on the basis of report lodged by Lalita Bhimrao Sonawane on an allegations that on 12th June, 2023 at about 6:00 p.m. on the occasion of birthday of her son they are proceeding towards the statue of Dr. Babasaheb Ambedkar. At the relevant time the present applicant and other co-accused restrained them and assaulted by means of stick, iron pipe and the sword. It is specifically alleged that the appellant Eknath Kokate has given a blow of sword on the head of

Mangesh Tayade. Sagar Sonaware has given a blow of iron pipe on the head of Vickky Kokate and Eknath Kokate has assaulted her by means of stick, due to which they have sustained the injuries.

4. Learned Counsel Mr. Gandhi for the appellants submitted that in fact, the present appellants are assaulted by the prosecution witnesses. Regarding the said incident, Vaishnavi Rushikesh Kokate who is the wife of the younger brother of Eknath Kokate has lodged report vide Crime No.209/2023. In fact, the injured Vickky Kokate and others pelted stones and bricks towards their house and immediately she has filed the report. He further submitted that one more crime bearing No.211/2023 is also registered against the injured witnesses as they were pelting the stones and bricks at the house of her and other relatives. He submitted that as two FIR's are registered against the injured Sagar Sonawane and Vickky Kokate with the assistance of the present informant, these false report is lodged. He further submitted that as far as the allegation regarding the applicability of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the SC and ST Act' for short) is concerned it is only against Yogesh Kokate and Maroti Kokate. Yogesh Kokate is already released on bail and Maroti Kokate is the appellant in Criminal Appeal No.475/2023. He further submitted that even taking into consideration

the allegations as it is, merely referring the persons by their caste is not an offence. He further submitted that though it is alleged that weapon like sword is used by Eknath Kokate however, the injuries sustained by the injured are not the incised wound or the wound caused by the sharp weapons but the wounds are in the nature of contused lacerated wound which are simple in nature. Their custodial interrogation is not required, and therefore, they be protected by granting anticipatory bail. He further submitted that bar under Section 18 or 18A of the SC and ST Act is not attracted as there is a general allegation and merely reference by the caste is not sufficient. In view of that, both the appeals deserve to be allowed.

5. Learned Additional Public Prosecutor strongly opposed the appeals on the ground that there is specific allegations against Yogesh Kokate and Maroti Kokate that they have abused the informant and the other prosecution witnesses by referring their caste, therefore, bar under Section 18 or 18A of the SC and ST Act is attracted. Moreover, the weapons are to be recovered from the present appellants and prays for dismissal of the appeals.

6. Learned Counsel for the informant Mr. Joshi submitted that in view of the bar under Section 18 of the SC and ST Act, both the

appeals deserve to be rejected as it is not maintainable. He further submitted that the alleged weapons are yet to be recovered, and therefore, custodial interrogation of the present appellants are required and prays for dismissal of the appeals.

7. After hearing the learned Counsel for the parties and on perusal of the investigation papers, it is not in dispute that scuffle took place between the two parties and two FIR's are registered against the injured Sagar Sonaware and Vickky Kokate and on the basis of report lodged by Lalita Sonawane, the present crime is registered against the present appellants. It is also revealed from the FIR's which are placed on record by the learned Counsel that the injured witnesses Sagar Sonawane and Vickky Kokate as well as the present appellants have also sustained the injuries in the alleged incident.

8. Now, question is whether the application of the present appellants is maintainable in the light of bar under Section 18 of the SC and ST Act. Now, it is well settled that even if a person is even alleged of accusation of committing an offence under the 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 Section 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 Section 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 preponderance of probability of commission of such an offence. Such an exercise is intended to put to a complete bar against entertainment of application of anticipatory bail which is unambiguously laid down under Section 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. The Full Bench of the Rajasthan High Court in the case of ***Virendra Singh Vs. State of Rajasthan*** [2000 Cri.Law Journal 2899] dealt with this issue and held that it has to be borne in mind that 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 inter as to why Section 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. It is further held that any other interpretation would go against the letter and spirit of the clear provision of Section 18 of the Act of 1989 which has already stood the test of reasonableness and constitutional validity upto the level of the Apex Court. This judgment is considered by this Court also in the case of ***Ratnakala Martandrao Mohite Vs. The State of Maharashtra and anr. 2020 ALL MR (Cri) 334*** and held that the issue of applicability of Section 18 of the Act elaborately and held that the provisions of Section 18 as well as newly amended Section 18 of the Act of 1989 create a bar for exercising jurisdiction under Section 438 of the Cr.P.C. However, it would not preclude the concerned Court from examination of allegations made in the FIR on its face value to determine whether *prima facie* case is made out or not. By referring the judgment of ***Kiran s/o Madukar Ingle Vs. State of Maharashtra and anr. 2019 ALL MR (Cri.) 2825*** it is held that 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.

9. In the light of the above observation, if the facts of the present case are taken into consideration admittedly, in a scuffle both the parties have sustained the injuries in the alleged incident. There is an allegation vice versa against each other.

10. As per the informant in the present crime, the injured witnesses Sagar Bhimrao Sonaware was assaulted by means of sword. However, the injuries sustained by all the injured are in the nature of contused lacerated wound and blunt trauma. All the injuries are simple in nature and the injured are already discharged from the hospital.

11. Learned Additional Public Prosecutor vehemently submitted that the weapon of the offence are yet to be recovered, and therefore, custodial interrogation of the present appellants is required. If the submissions of the learned APP are taken into consideration and the fact that the injured have sustained the injuries merely because the weapons are yet to be recovered is not sufficient to dismiss the appeal. However, Considering that recovery of the weapon is the material part of the investigation, some directions can be given to the present appellants regarding the production of the said weapons. As far as learned Additional Public Prosecutor's submissions is concerned that one of the appellant Maroti has abused the informant and other two injured witnesses on their caste.

12. The recitals of the FIR shows that general allegations are made stating that they have referred the caste of the informant and the injured witnesses. It is well settled that mere reference of the caste by the accused persons of the informant or other prosecution witnesses is not sufficient to attract the provisions. There should be an intention to humiliate such person. The intentional insult and humiliation is the basic ingredients to attract the said provisions against the persons who have uttered the said words which appears to be absent in the present case.

13. In view of that both the appeals deserve to be allowed and the appellants deserve to be released on bail by imposing certain conditions. Accordingly, I proceed to pass the following order :

- (i) Both the appeals are allowed.
- (ii) In the event of arrest, the appellants namely 1) Punjabrao Wasudeo Kokate, 2) Kishor Trambak Kokate, 3) Haridas Vishwanath Kokate, 4) Balu @ Ramesh Wasudeo Kokate, 5) Madhukar Jagganath Kokate, 6) Lokesh Shrikrishna Kokate, 7) Gaurav Mahadeo Kokate in Criminal Appeal No.464/2023 and the appellants 1) Eknath Ramdas Kokate, 2) Maroti Wasudeo Kokate, 3) Vickky @ Rushikesh Punjabrao Kokate in Criminal Appeal No.475/2023 in connection with Crime No.210/2023 registered at police station Khamgaon (Rural), District Buldhana for the offences punishable under Sections 307, 143, 147, 148, 324, 504 and 506 read with Section 149 of the Indian Penal Code and under Section 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, be released on anticipatory bail on executing P.R. Bond in the sum of Rs.25,000/- (Rs. Twenty five thousand) each with one solvent surety each in the like amount.

(iii) The appellants Eknath Ramdas Kokate and Vickky @ Rushikesh Punjabrao Kokate shall produce the sword, stick and iron pipe before the Investigating Officer. The period of production shall be considered as their custody in view of Section 27 of the Indian Evidence Act, 1872.

(iv) The appellants shall attend concerned Police Station as and when required for the investigation purpose.

(v) The appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper the prosecution evidence.

14. Both the appeals are disposed of accordingly.

15. The fees of the appointed Counsel be quantified as per rules.

(URMILA JOSHI-PHALKE, J.)

**Divya*