

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

CRIMINAL APPEAL NO. 583 OF 2022

- APPELLANTS:**
- 1] Prabhakar s/o Devrao Dahatonde,
Age 52 years, Occu: Agriculturist,
 - 2] Narayan s/o Devrao Dahatonde,
Age 47 years, Occu: Agriculturist,
 - 3] Nitin s/o Prabhakar Dahatonde,
Age 22 years, Occu: Education,
 - 4] Devrao s/o Khanduji Dahatonde,
Age 77 years, Occu: Agriculturist,
 - 5] Vaibhav s/o Narayan Dahatonde,
Age 20 years, Occu: Education.

..V E R S U S..

- RESPONDENTS**
- 1] State of Maharashtra,
through Police Station Officer,
Deulgaon Raja, Tq. Deulgaon Raja,
District Buldana.
 - 2] Bharat s/o Sudhakar Khillare,
Age 25 years, Occu: Agriculturist
R/o Mehuna Raja, Tq. Deulgaon Raja,
District Buldana.

Mr A.J. Thakkar, counsel for the appellants.

Mr. M.G. Ghodeswar, APP for the respondent No.1.

Mr. Madhur Deo, counsel for the respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J. .
DATE : 10/07/2023

ORAL JUDGMENT :

1. Heard.

2. Admit.

3. The present appeal is preferred by the appellants against the order of rejection of their anticipatory bail application by the Additional Sessions Judge, Buldana in Anticipatory Bail Application No. 291/2020.

4. The appellants are apprehending their arrest in connection with Crime No. 323/2022 registered with Police Station Officer Deulgaon Raja, relating to the offences punishable under Sections 143, 147, 148, 324, 323, 506 read with Section 149 of the Indian Penal Code and Sections 3(1) (r)(s), 3(2)(v)(a) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act of 1989').

5. The appellants are apprehending arrest at the hands of the Police as the crime is registered on the basis of a report lodged by the Bharat Sudhakar Khilare, on an allegation that on 20/08/2022, the present appellants found unlawful assembly and by holding weapons Axe, Sticks, Sickles and Stones in their hand, they assaulted him and his

mother by entering into the agricultural field. Due to the assault, he sustained a head injury, his mother also sustained the injury and was admitted to the hospital at Jalna. It is further alleged that all the appellants hatched the plan to eliminate him as well as his mother assaulted them and abused them by referring to their caste. On the basis of the said report, the Police have registered the crime against the present appellants.

6. As far as the contentions of the appellants are concerned, they are falsely implicated in the alleged offence as there is a previous dispute between them on account of agricultural land. It is further contention of the present appellants that even if the allegations are taken as it is in the FIR, no offence is made out under the provisions of the Act of 1989, therefore, the bar under Section 18 and 18-A of the said Act is not applicable. It is further contention of the appellants that, their custodial interrogation is not required and hence they be protected by granting anticipatory bail.

7. The said appeal is strongly opposed by the State on the ground that the present appellants not only entered into the agricultural field of the informant but they entered with deadly weapons like Axe, Sickle in their hands and assaulted the informant as well as his brother and caused the injuries. It reveals from the investigation that the present appellants within the public view insulted and humiliated the

informant, who belongs to Scheduled Caste and Scheduled Tribe, and thereby committed the offence under the provisions of the Act of 1989 therefore, the bar under Section 18 and 18A is attracted, hence criminal application deserves to be rejected.

8. The informant has also raised the objection and endorsed the same contention and opposed the present appellants to release him on bail.

9. Heard learned counsel Mr A.J. Thakkar for the appellants he submitted that it reveals from the order passed by the Naib Tahsildar, Deulgaon Raja, that there is a previous dispute between the present appellants and the informant, on account of the previous enmity. As per the application filed before the Tahsildar, the appellants have claimed the right of way, and the notice was issued to the informant and thereafter, this false report is lodged against them. He submitted that even the allegations taken as it is, no offence is made out under the provisions of the Act of 1989 and therefore, appellants be protected by granting anticipatory bail.

10. Learned APP vehemently submitted that the recitals of the FIR show that the appellants have humiliated and insulted the informant and his mother by abusing them on their caste. Thus, there is prima-facie material against the present appellants, therefore, the bar under Sections 18 and

18-A is attracted and the appeal deserves to be rejected.

11. Mr Madhur Deo, learned counsel for the respondent No.2 reiterated the same contention and submitted that in view of the bar, the appeal deserves to be rejected.

12. Having heard both the sides and on perusal of the recitals of the FIR, the allegation against the present appellants is that on 20/08/2022 at about 11 to 11.30 a.m., the present appellants have formed the unlawful assembly and entered into the agricultural field that weapons like Axe, Stick, and Sickles and assaulted the informant and his mother. It is further alleged that appellant No.1 has abused them by referring to their caste within the public view, insulting and humiliating them by referring to their caste. As far as the allegation against other appellants is concerned, general allegations are made against them. Now, whether the bar is attracted or not is to be considered in the light of the various judgments of this Court as well as of the Hon'ble Apex Court.

The full bench of the Rajasthan High Court (Jaipur Bench) wherein the High Court had considered the issue of whether the bar is attracted or not and in what circumstances it is attracted, it is held that it has to be borne in mind that 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 enter 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 pre-ponderance of probability or commission of such an offence.

13. Thus, if from the FIR itself the ingredients of offence as laid down under Section 3 of the Act itself is found to be missing, the bar created by Section 18 would not be allowed to operate against an accused and only in that event his application for anticipatory bail would be dealt with by the concerned court to determine whether the Act of 1989 can be said to be rightly applicable against the accused and

not to enter into a further enquiry into the matter so as to determine whether the allegations levelled against the accused in the FIR are true or false.

14. By referring the said judgment, this court has also referred in the case of ***Ratnakala Martandrao Mohite V/s State of Maharashtra reported in 2020 ALL MR (Cri) 334*** wherein it is held that in the light of aforesaid judicial authority, it is evident that application under section 438 of the Code of Criminal Procedure for the relief of pre-arrest bail can be entertained only on the ground of in-applicability of provisions of the Act of 1989 and it would be verifiable only after perusal of recital of the FIR or complaint itself and not beyond that. It is the rule of law that once it is gathered from the FIR that the appellants are the accused of committing offence as prescribed under Section 3(1)(r)(s) or (w) (ii) of the Act 1989, the bar under Section 18A of the Act of 1989 would instantly come into operation against them. If the contents of FIR do not constitute ingredients of offence under the Act of 1989, there would not be any embargo of statutory bar engrafted under Section 18 or 18A of the Act of 1989. This view is again taken in the case of ***Navnath Dalsingh Rathod V/s State of Maharashtra reported in Law Finder document No.1486431 and Jagdish Sajjan Kumar Banka V/s State of Maharashtra reported in 2023 SCC Online Bombay 581***, taking into consideration overall factual score

of the matter, and after taking into consideration, the allegations in the FIR admittedly specific allegations is made against the applicant No.1. As far as the applicability of the provision under Section 3(1)(r) and 3(1)(s) of the Act of 1989 for invocation of the powers under Section 438 of the Code of Criminal Procedure, it is still open to this Court to find out by looking to the FIR of the case, itself as to whether prima-facie case is made out against the present appellants. Considering the allegation, the intent to insult or intimation, with intend to humiliate the complainant in public view by the appellants is attracted against the appellant No.1. As far as the other appellants are concerned, there are general allegations against them. Considering the same, the appeal deserves to be partly allowed. Accordingly, I proceed to pass following order;

- a) Criminal Appeal is partly allowed.
- b) The prayer of appellant No.1 to grant of anticipatory bail is hereby rejected.
- c) The appellant Nos. 2,3 and 5 are released on anticipatory bail in the event of their arrest in connection with crime No. 323/2022 registered at Deulgaon Raja, Police Station and they are released on anticipatory bail in the event of their arrest on executing P. R. bond of Rs. 25,000/-

each with one solvent surety of like amount.

- d) As far as applicant No.4 is concerned is abated, as he is reported to be dead.
- e) The applicant Nos. 2,3 and 5 shall attend their concerned police station as and when required for investigation purpose.
- f) The Applicants shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.
- g) As far as the recovery of the weapons is concerned, the appellants shall cooperate with the investigating agency to produce the incriminating weapons and the period of production to be considered as custody for the purpose of Section 27 of the Indian Evidence Act.

Criminal Appeal is disposed of.

JUDGE

RKN