

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

CRIMINAL APPEAL NO.784 OF 2022

1. Sau. Rekha w/o Anil Patil,
Aged about 47 years,
Occupation – Housewife,
2. Ku. Komal d/o Anil Patil,
Aged about 26 years,
Occupation – Student,
3. Sau. Manda w/o Narendra Kherade,
Aged about 43 years,
Occupation – Housewife,
4. Ku. Snehal d/o Narendra Kherade,
Aged about 23 years,
Occupation – Student,
5. Ku. Chanchal d/o Narendra Kherade,
Aged about 19 years,
Occupation – Student

All Resident at ‘Pitruchaya’,
Vidya Vihar Colony,
Behind Shreyas Motors,
Navhate Plot, Badnera Road,
Amravati,
Tah. & District Amravati - 444607

...APPELLANTS

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Police Station Chandur Railway,
Tq. Chandur Railway, District Amravati
2. Nirmala Arun Khandare,
Aged 45 years, Occupation – Housewife,
R/o Shivaji Nagar, Chandur Railway

...RESPONDENTS

Mrs. A.P. Madhuri, Advocate a/w Shri Jasprit Singh Chilhotra,
Advocate for the appellants.
Shri I.J. Damle, APP for the State.
Ms Soniya Gajbhiye, Advocate (appointed) for R.No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : JULY 07, 2023.

ORAL JUDGMENT :

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

2. By preferring this appeal under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellants have challenged the order passed in Criminal Bail Application No.1162/2022 whereby the Additional Sessions Judge-1, Amravati has rejected the anticipatory bail application of the present appellants.

3. The appellants are apprehending arrest at the hands of police as Crime No.492/2022 is registered against the present appellants on 16/09/2022 at police station Chandur Railway, District Amravati for the offence punishable under Sections 324, 452, 294, 143, 147, 504, 506 read with Section 149 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act of 1989' for short).

4. As per the accusation in the FIR, on 16/09/2022 at about 1.00 p.m., present appellants entered into the house of the informant. Appellant No.2 was holding knife in her hand. It is alleged that all the appellants abused her and assaulted her by means of stones by entering into the house. It is further alleged that she was abused in a filthy language. On the basis of said report, police have registered the crime against the present appellants.

5. As per the contention of the present appellants that the provisions of Section 3(1)(r), 3(1)(s) and 3(2)(va) of the Act of 1989 are not attracted, as there is no reference that the present appellants have abused or humiliated the informant on her caste. It is further the contention of the present appellants that as per the allegation, the alleged incident has taken place inside the house. Therefore, said incident has not occurred within the public view, therefore also the provisions of the Act of 1989 are not applicable. Hence, bar under Section 18 and 18A of the Act of 1989 is not attracted. It is further submitted by the appellants that as the custodial interrogation of the present appellants is not required and bar under Section 18 and 18A of the Act of 1989 is not applicable, therefore, they be released on anticipatory bail.

6. Said application is strongly opposed by the State on the ground that the appellants were knowing about the caste of the

informant. Intentionally, they have abused the informant by knowing her caste, and therefore, the provisions of the Act of 1989 are attracted. As there is a bar under Section 18 and 18A, the application rightly rejected by the learned Special Judge. No ground is made out to release the present appellants on bail.

7. Learned Counsel for respondent No.2 also vehemently submitted that as there is a bar under Section 18 or 18A, the appeal deserves to be dismissed.

8. She further submitted that as the informant was abused in a filthy language, the offence under Section 3(1)(r), 3(1)(s) and 3(2)(va) of the Act of 1989 are attracted. As the present appellants entered into the house of the informant, abused her in a filthy language and also assaulted her by means of stones, therefore, custodial interrogation of the present appellants is required and prays for rejection of the appeal.

9. Having heard both the sides and on perusal of the investigation papers, it reveals that the FIR is lodged by the informant on an allegation that she is residing at Shivaji Nagar, Chandur Railway, on 16/09/2022, present appellants entered inside the house and abused her in a filthy language and assaulted her by means of stones. Her medical certificate is on record. The investigating Officer has also carried out the spot panchnama and recorded the relevant statements of the witnesses.

The nature of the injuries sustained by the informant is the abrasion 2 x 1 cm on left side of cerebral hemisphere. One of the injured Nirmala Arun Khandare also received the injury which are in the nature of abrasions. After going through the entire statements of the witnesses admittedly, there is no reference as to the caste of the informant or the prosecution witnesses. There are no abuses by referring the caste of the informant.

10. As far as the bar is concerned, the issue is referred by the catena of decisions in the case of *Virendra Singh Vs. State of Rajasthan [2000 Cri.L.J. 2899]* wherein the Full Bench of the Rajasthan High Court has considered the issue and held 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 infer as to why Sec.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 of commission of such an offence.

It is further held that 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 further enquiry into the matter so as to determine whether the allegations levelled against the accused in the FIR are true or false. This aspect is also considered by this Court in ***Ratnamala Mohite Vs. State of Maharashtra [2020 ALL MR 334]*** wherein also this Court has considered the various decisions of this Court as well as of the Apex Court and held that the scope and ambit of applicability of Sections 18 as well as 18A of the Act of 1989. This Court in the case of ***Kiran S/o. Madhukar Ingle Versus The State of Maharashtra and another [2019 ALL MR 2825]*** dealt with issue of applicability of Section 18 of the Act of 1989 elaborately and held that the provisions of Section 18 as well as newly amended Section 18A of the Act of 1989 create 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 and its face value to determine whether *prima facie* case is made out or not? In paragraph No. 13 and 15 of the aforesaid *Kiran Ingle's* case this Court made observations, which reads 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.

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.”

11. It is further held by this Court that 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 make it 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 the “public view”.

12. In the light of the aforesaid well settled position of law, it is evident that application under Section 438 of the Cr.P.C. for the relief of pre-arrest bail can be entertained only on the ground of inapplicability 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.

13. Taking into consideration the well settled position of law if the facts in the present case are taken into consideration, admittedly there is no reference regarding the insult or humiliation with reference to the caste the recitals of the FIR also shows that the alleged incident

has taken place inside the house so it is not within the public view. Undisputedly, the statements recorded after registration of the crime shows that there is absolutely no reference as to the insult by referring the caste of the informant. The general allegations are made against the appellants and from the allegations admittedly the offence comes under the Indian Penal Code however, the recitals of the FIR are not sufficient to attract the provisions under the Act of 1989. Considering the allegations levelled against the present appellants, the bar under Section 18 or 18A is not attracted, and therefore, the appellants are entitled to be released on bail.

14. In view of that the appeal deserves to be allowed. Hence, the following order :

(i) The appeal is allowed.

Corrected as per Hon'ble
Court's order dated
19/07/2023.

(ii) The impugned order dated 05/11/2022 passed in Criminal Application No.1162/2022 by the learned Additional Sessions Judge-1, Amravati rejecting the bail application, is quashed and set aside.

(iii) The appellants i.e. (1) Sau. Rekha w/o Anil Patil, (2) Ku. Komal d/o Anil Patil, (3) Sau. Manda w/o Narendra Kherade, (4) Ku. Snehal d/o Narendra Kherade and (5) Ku. Chanchal d/o Narendra Kherade

are herein released on bail on executing P.R. Bond in the sum of Rs.15,000/- (Rs. Fifteen thousand) each with one solvent surety each in the like amount in respect of Crime No.492/2022 registered at police station Chandur Railway, District Amravati for the offence punishable under Sections 324, 452, 294, 143, 147, 504, 506 read with Section 149 of the Indian Penal Code and under Sections 3(i)(r), 3(i)(s), 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

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

(v) The appellants shall furnish their Cell phone numbers and address along with address proof before the Investigating Officer.

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

(URMILA JOSHI-PHALKE, J.)