



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

CRIMINAL APPEAL NO. 737 OF 2023

- 1) Vijay Mersingh Rathod
Aged about 43 years, Occu. -Agriculturist,
- 2) Neelam Vijay Rathod,
Aged about 40 years, Occu.- Household,
R/o. Yerawar Layout, Vithala Ward,
Pusad, District Yavatmal. **APPELLANT**

// VERSUS //

- 1) State of Maharashtra,
Through Police Station Officer,
Police Station Vasantnagar,
Yavatmal.
- 2) Anita Raju Gopalnarayan,
Aged about 48 years, Occu.-Household,
R/o. Yerawar Layout, Vithala Ward,
Pusad, District Yavatmal. **RESPONDENTS**

Mr. Amol Deshpande, Advocate for Appellant.
Ms. Mukta Kavimandan, Additional Public Prosecutor for
Respondent No.1/State.
Ms. Smita Deshpande, Advocate (appointed) for Respondent
No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : DECEMBER 14, 2023

ORAL JUDGMENT :

1. Heard. **Admit.** Heard finally by consent of the learned
counsel appearing for the parties.

2. The present appeal is preferred by the appellant under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereafter referred to as “the Act of 1989” for short) by which the anticipatory bail application No.384/2023 of the appellants is rejected by the Special Court Pusad, District Yavatmal on 06.11.2023.

3. The present appellants have filed anticipatory bail application before the Special Court under Section 438 of the Code of Criminal Procedure in connection with Crime No.475/2023 for the offence punishable under Sections 323, 427, 504, 506 read with Section 34 of the Indian Penal Code and Sections 3(1)(r)(s) and 3(2) (va) of the Act of 1989, registered with Police Station Vasant Nagar Pusad, District Yavatmal. The appellants are apprehending arrest at the hands of police as First Information Report (FIR) is lodged against them on the basis of report lodged by Anita Raju Gopnarayan. As per the allegations of the informant that she is residing from last 20 years in the rented premises of Pundlik Gaikwad and they entered into the transaction with the said Pundlik Gaikwad to purchase the said place and also assures that they would pay Rs.5,75,000/-. On 12.10.2023 at about 06.30 am. when she was present in the house, the present appellants came in front of the house and asked them to vacate the house and also threatened them. It is alleged that they were abused by

referring their caste by saying, “तुम्ही बाहेर निघा नाहीतर तुमचे घर पेटवुन देतो, धेडगे हो तुमची जात खराब आहे, तुमच्या मुलाचे आयुष्य खराब करतो”. As per the allegations of the informant, present appellants have purchased the said plot behind their back from the original owner and since then the dispute is going on between them. On the basis of said report, police have registered the crime.

4. Learned Counsel for the appellants submitted that from the recitals of the FIR itself shows that the offence is not made out, as the alleged incident has not occurred within the public view. He further submitted that mere reference of the informant by the caste is not sufficient to attract the provisions of the Act of 1989. He submitted that as far as the investigation is concerned, custodial interrogation is not required, the present appellants are implicated due to the previous dispute which is going on between them, on account of the land. Considering the same, the appellants be protected by granting anticipatory bail. He also invited attention towards the FIR and submitted that alleged incident has taken place on 12.10.2023 whereas, the FIR is lodged on 20.10.2023, thus, there is inordinate delay which is not explained by the informant and prays for the protection.

5. Learned Counsel for the appellants, in support of his contention, placed reliance on ***Pradnya Pradeep Kenkare and Anr. Vs.***

State of Maharashtra, reported in **2005(3) Mh.L.J. 368** and order of this Court in **Criminal Appeal No.365/2023**, **Ajinkya s/o Chandrashekhar Ghogare Vs. State of Maharashtra & Anr.**, decided on **27.06.2023** and submitted that in view of the observation of Division Bench of this Court in the case of **Pradnya Pradeep Kenkare** (supra), in the present case also, the alleged incident has not occurred within the public view and therefore, the ingredients of the offence are not attracted and therefore, bar under Sections 18 and 18-A of the Act of 1989 is also not attracted and application is maintainable.

6. Per contra, learned APP strongly opposed the appeal on the ground that after registration of the FIR, the various statements are recorded and it reveals that there is previous dispute between the informant and present appellants and due to the dispute, present appellants came in front of house of the informant and abused them on their caste. In view of bar under Section 18 or 18A of the Act of 1989, the application is not maintainable and liable to be rejected.

7. Learned Counsel for the respondent No.2 Ms. Smita Deshpande reiterated the said contentions and submitted that present appellants have assaulted and abused with an intention to humiliate the informant thus, *prima facie* case is made out against the present appellants and bar under Section 18 is attracted hence, application liable to be rejected.

8. After hearing both the sides and on perusal of the investigation papers and in view of the settled law, the recitals of the FIR are to be looked into. Learned Counsel submitted that the recitals of the FIR shows that nobody was present at the time of incident thus, alleged incident has not occurred within the public view. He further submitted that from the record it reveals that the alleged incident has occurred in front of house of the informant and she nowhere stated that after hearing noise of the said quarrel, the public or the villagers gathered there.

9. The bar under Section 18 of the Act of 1989 is applicable when there is a *prima facie* material to show that the appellants have committed the offence under the provisions of the Act of 1989. This fact is considered by the Rajasthan High Court in the case of ***Virendra Singh Vs. State of Rajasthan***, reported in ***2000 Cri.L.J. 2899***, wherein the Full Bench of the Rajasthan High Court held 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 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 a complete bar against entertainment of an application of anticipatory bail which is unambiguously laid down under Section 18 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 there from taken at their face value disclosed the existence of the ingredients constituting the alleged offence. This aspect is also consider by this Court in the case of *Ratnakala Martandrao Mohite Vs. The State of Maharashtra and anr.* reported in *2020 ALL MR (Cri) 334*, *Navnath s/o Dalsing Rathod @ Aade and ors. Vs. State of Maharashtra thr. Police Inspector Karmad Police Station, Aurangabad and anr.* in Criminal Appeal No.968 of 2018 decided on 25.04.2019 and *Jagdish Sajjankumar Banka Vs. State of Maharashtra and anr.* reported in *2023*

SCC OnLine Bom 581 wherein by referring the judgment that Full Bench of the Rajasthan High Court, it is 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 18A 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. In the case of ***Vilas Pandurang Pawar and anr. Vs. State of Maharashtra and ors.*** reported in **2012 ALL MR (Cri.) 3743 (S.C.)** wherein the Hon'ble Apex Court held that no Court shall entertain application for anticipatory bail in the offence registered under the provisions of the Act of 1989, unless it *prima facie* finds that such an offence is made out. Similar principles are also laid down by this Court in the above said decisions. In such circumstances, it is evident that in spite of bar under Section 18 of the Act of 1989 for invoking the powers under Section 438 of the Cr.P.C., it is still open to this Court to find out by looking into the FIR as to whether *prima facie* case is made out by the complainant against the appellant. Thus, the application under Section 438 of the Cr.P.C. needs to be considered for ascertaining whether there is a material to make out a *prima facie* case for offence punishable under the Act of 1989.

10. Learned Counsel for the appellants submitted that there is no reference in the FIR that the alleged incident has witnessed by somebody and placed reliance on *Pradnya Pradeep Kenkare* (supra). This aspect is also considered by the Hon'ble Apex Court in the case of *Hitesh Verma Vs. State of Uttarakhand & Anr.*, reported in *2021 Cri.L.J. 1*, wherein by referring the judgment of *Swaran Singh & Ors. Vs. State through Standing Counsel & Ors.*, reported in *(2008) 8 SCC 435*, wherein the Apex Court has drawn the distinction between the expression "public place" and "in any place within public view". The Hon'ble Apex Court held that as per the FIR the allegation of abusing the informant were within the four walls of her building. It is not the case of the informant that there was any member of the public (not merely relatives or friends) at the time of the incident in the house. Therefore, the basic ingredients that the words were uttered "in any place within public view" is not made out. In the list of witnesses appended to the charge-sheet, certain witnesses are named but it could not be said that those were the persons present within the four walls of the building. The offence is alleged to have taken place within the four walls of the building. Therefore, in view of judgment of this Court in *Swaran Singh*, it cannot be said to be a place within public view as none was said to be present within the four walls of the building as per the FIR or charge-sheet. The Hon'ble Apex Court while distinguishing

the “public place” and “public view” in the case of ***Suwarna Singh*** (supra) held that the expression “place within public view” with the expression “public place” can be distinguish as a place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons. It could have been a different matter had the alleged offence has committed inside the building, and also was not in the public view. However, if the offence is committed outside the building i.e. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, but some members of the public are there then also it would be an offence since it is within the public view. We must, therefore, not confuse with the expression “place within public view” and with the expression “public place”.

11. In the light of the above said legal principals, if the facts of the present case are taken into consideration, admittedly, the recitals of the FIR nowhere shows that when the alleged incident has taken place, anybody has witnessed the incident or some persons have gathered there, after hearing the quarrel. The allegations against the present appellants is that they have referred the informant by the caste. It is well settled that merely calling a person by his caste name though may

amount to insult or abuse to him, it can be said to be with intent to humiliate such person to show that the intentional insults or intimidates, intimidation was with intent to humiliate a person, some more material is required which is absent and not revealed from the recitals of the FIR. The allegations only referred that the present appellants have referred the informant by her caste. Thus, the basic ingredients of the offence appears to be absent as the alleged incident nowhere discloses to be occurred with the public view and it also nowhere reveals from the recitals of the FIR that with intent to insult and humiliate the informant, the alleged words are used by the present appellants. Admittedly, mere reference by the caste is not sufficient to attract the provisions of the Act of 1989. In view of that the bar under Section 18 or 18A is not attracted and therefore, the appellants have made out the case to protect them by granting the anticipatory bail.

12. In view of that as the contents of the FIR do not constitute the ingredients of the offence and therefore, bar under Section 18 is not attracted hence, the appeal deserves to be allowed by imposing certain conditions. Accordingly I proceed to pass the following order :

- i) The Criminal Appeal is allowed.
- ii) The impugned order rejecting the bail application No.384/2023, passed by the Special Court Pusad, District Yavatmal, on 06.11.2023 is hereby quashed and set aside.

- iii) In the event of arrest, the appellants/accused – Vijay Mersingh Rathod and Neelam Vijay Rathod are released on anticipatory bail in connection with Crime No.475/2023 for the offence punishable under Sections 323, 427, 504, 506 read with Section 34 of the Indian Penal Code and Sections 3(1)(r)(s) and 3(2)(va) of the Act of 1989 registered with Police Station Vasant Nagar Pusad, District Yavatmal, on executing PR. bond in the sum of Rs.25,000/- each with one solvent surety in the like amount.
- iv) The appellant shall not directly or indirectly induce, threat or pressurize any witnesses who are acquainted with the facts of the present case.
- v) The appellant shall attend the concerned Police Station as and when required from the investigation purpose.
- vi) The fees of the appointed Counsel for respondent No.2 be quantified as per rules.

The Criminal Appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)