



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

CRIMINAL APPEAL NO. 738 OF 2023

- 1) Dnyaneshwar S/o Wasudeo Morkhade,
Aged about 36 years,
Occu.-Agriculturist and Tractor owner,
- 2) Nivrutti S/o Wasudeo Morkhade,
Aged about 30 years, Occu.- Agriculturist.
- 3) Wasudeo S/o Changdev Morkhade,
Aged about 59 years, Occu.- Agriculturist.
- 4) Rajendra S/o Mahadeo Morkhade,
Aged about 35 years, Occu.- Agriculturist.
- 5) Ravi @ Ravindra S/o Namdeo Morkhade,
Aged about 32 years, Occu.- Agriculturist.
- 6) Shyam S/o Gajanan Morkhade,
Aged about 25 years, Occu.- Education.
- 7) Ram S/o Gajanan Morkhade,
Aged about 25 years,
Occu.- Business &Agriculturist.

All R/o. Umra Bhise, Tah. Khamgaon,
District Buldhana.

.... **APPELLANTS**

// VERSUS //

- 1) State of Maharashtra,
Police Station Officer,
Police Station Hiwarkhed,
Tah. Khamgaon, District Buldhana.
- 2) Dhammapal S/o Ramkrushna Hiwrale,
Aged about 40 years, Occu.-Agriculturist,
R/o. Umra Bhise, Tah. Khamgaon,
District Buldhana.

.... **RESPONDENTS**

Mr. Anil Mardikar, Senior Advocate a/b. Mr. V.R. Deshpande,
Advocate for Appellants.
Ms. Deepa Charlewar, Additional Public Prosecutor for
Respondent No.1/State.
Mr. V.S. Wankhade, Advocate 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 appellants under Section 14(A) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereafter referred to as “the Act of 1989” for short) against the order dated 30.10.2023, by which the Anticipatory Bail Application No.336/2023 is rejected by the Special Court, Khamgaon.

3. The present appellants have filed an application for grant of anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with Crime No.191/2023 registered with Hiwarkhed Police Station, District Buldhana for the offence punishable under Sections 143, 147, 148, 452, 354, 294, 323, 352, 506 read with Section 149 of the Indian Penal Code and Section 3(1)(w)(i),

3(1)(w)(ii) and 3(2)(va) of the Act of 1989. The appellants are apprehending arrest at the hands of the police as crime is registered on the basis of report lodged by Dhammapal Hivrle on an allegations that on 28.9.2023 at about 08.45 am, when he had been to the terrace of his house, he witnessed that there was a digging by JCB on the land of Gairan's e-Class land of the village. He immediately brought this fact to the notice of Police Patil Suresh Bhise by calling him at the said place, as a Sarpanch when he enquired with the appellant Dnyaneshwer Morkhade, was arrogant and abused him on his caste. It is alleged that he has also called his brother and they both have abused the informant on his caste and also assaulted him by fist and kick blows and threatened him. It is further alleged that after some time, they have called their other relatives i.e. appellant Nos.3 to 7, who also came at his home and abused him on his caste and came on his person therefore, he got scared, his wife pulled him inside the house but the appellant No.1 touched the breast of his wife and also gave a kick to his wife therefore, his wife fallen on the ground and they left by abusing them on their caste. On the basis of said report, police have registered the crime against the present appellants and other accused.

4. It is submitted by the learned Senior Counsel Mr. Mardikar that bar under Section 18 is not attracted as there is nothing on record to show that the alleged incident had occurred within the public view.

He further submitted that as far as the allegations are concerned, which are general in nature and no specific role is attributed to the present appellants. He also submitted that the appellants have approached to this Court for quashing of the First Information Report (FIR) wherein, the Court has directed the Investigating Agency not to file the charge-sheet and admitted the appeal. He further submitted that the Division Bench of this Court in the case of ***Ramesh S/o Yashwant Bajirao and Ors. Vs. The State of Maharashtra and Anr.***, in ***Criminal Application (APL) No.1014/2019***, decided on 12.10.2023 had considered the issue and held that in order to constitute the offence under the provisions of the Act of 1989, there must be intentional insult or intimidation with intent to humiliate a member of a particular community. The abuses must be within the public view. He submitted that in view of the observation of the Division Bench of this Court and the recitals of the FIR in the present case, admittedly, nothing is on record to show that there were abuses on the caste with intent to humiliate the informant therefore, bar under Section 18 or 18A of the Act of 1989 is not attracted and the appellants are entitled to be released on anticipatory bail in the event of their arrest.

5. Per contra, learned APP and learned Counsel for the informant submitted that considering the allegations as it is, there are specific averment in the FIR. As far as appellant Nos.1 and 2 are

concerned, that they have insulted and humiliated the informant by referring his caste and by abusing him on his caste. They further submitted that from the recitals of the FIR, it is crystal clear that the incident occurred within the public view as Police Patil and one another villager were present when the initial incident was occurred between the appellant Nos.1 and 2 and the informant. Thus, there is *prima facie* material against the appellant Nos.1 and 2 to connect them with the alleged offence and therefore, bar under Section 18 or 18A of the Act of 1989 is attracted and appeal deserves to be rejected.

6. Having heard the learned Senior Counsel for the appellants and learned APP for the State and learned Counsel for respondent No.2 and on perusal of the FIR, it is necessary to mention whether the bar under Section 18 or 18A is attracted or not. It is well settled law in view of the judgment of the Full Bench of the Rajasthan High Court in ***Virendra Singh Vs. State of Rajasthan***, reported in ***2000 Cri.L.J. 2899***, wherein 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 same ratio is laid down 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 of the 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.PC. 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 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.PC., 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.PC. 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.

7. In the light of the well settled principles, if the allegations in the present matter are considered, admittedly, there are specific allegations against the appellant Nos.1 and 2. The recitals of the FIR shows that the initial incident has occurred within the public view, but as far as second incident is concerned against the appellant Nos.3 to 7, there is general allegations and no specific role is attributed to the appellant Nos.3 to 7. By considering the allegations, admittedly, the offence is made out against the appellant Nos.1 and 2, however, if the contents of the FIR are taken into consideration, the contents of the FIR do not constitute ingredients of the offence under the Act of 1989 against the appellant Nos.3 to 7 and therefore, there would not be any embargo or statutory bar to entertain the application under Section 438 of the Cr.P.C. of the appellant Nos.3 to 7 are concerned.

8. Learned Senior Counsel submitted that he is seeking permission to withdraw the appeal as far as the appellant Nos.1 and 2 are concerned. In view of that the appeal deserves to be allowed partly. Accordingly I proceed to pass the following order :

- i) The Criminal Appeal is partly allowed.
- ii) In the event of arrest, the accused/appellants Nos. (3) Wasudeo S/o Changdev Morkhade, (4) Rajendra S/o Mahadeo Morkhade, (5) Ravi @ Ravindra S/o Namdeo Morkhade, (6) Shyam S/o Gajanan Morkhade and

(7) Ram S/o Gajanan Morkhade are released on anticipatory bail in connection with Crime No.191/2023 registered with Hiwarkhed Police Station, District Buldhana for the offence punishable under Sections 143, 147, 148, 452, 354, 294, 323, 352, 506 read with Section 149 of the Indian Penal Code and Sections 3(1)(w)(i), 3(1)(w)(ii) and 3(2)(va) of the Act of 1989, on executing PR. bond in the sum of Rs.25,000/- each with one solvent surety in the like amount.

- iii) The appeal is withdrawn as far as the appellant Nos.1 and 2 are concerned therefore, it is disposed of to that extent.
- iv) The appellant Nos.3 to 7 shall not directly or indirectly induce, threat or pressurize any witnesses who are acquainted with the facts of the present case.
- v) The appellant Nos.3 to 7 shall attend the concerned Police Station as and when required for the investigation purpose.

The Criminal Appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)