

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

CRIMINAL APPEAL NO. 237 OF 2024

Kiran w/o Ganesh Pimplekar

Vs.

State of Maharashtra, PS Khamgaon, District – Buldhana and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. H.R. Gadhia, Advocate for applicant.

Mr. K.R. Lule, APP for non-applicant/State.

Mr. Ishant V. Tambi, Advocate (appointed) for non-
applicant No.2.

CORAM : SMT. URMILA JOSHI PHALKE, J.

DATE : 16.07.2024

By this appeal, the appellant has challenged the order passed by the Special Judge at Khamgaon under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, in ABA No.227/2023, by which the application of the present appellant for grant of pre-arrest bail is rejected by order dated 05.08.2023.

2. The crime is registered against the present appellant. On the basis of the report lodged by Choti Nandu Dhamne on an allegation that, on 24.07.2023 at about 8:00 a.m. when she was at house, the applicants who is her neighbour raised

quarrel with her and abused them on their caste as well as threatened them and they drove her out from the said place. It is alleged that the present applicant and the other co-accused harassing them continuously. On the basis of said report, police have registered the crime against the present appellant and the other co-accused under Section 506 read with 34 of the Indian Penal Code and under Section 3(1)(r), 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act of 1989').

3. Learned counsel for the appellant submitted that as far as the allegations are concerned, no *prima facie* case is made out. Mere reference of the caste is not sufficient to charge the persons for the offence punishable under Section 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. He further submitted that after the interim protection was granted to the appellant, he has cooperated with the investigating agency as far as the custodial interrogation is concerned, which is not required. He further submitted that the bar

Section 18 is also not attracted as mere reference of the caste is not sufficient. He submitted that the learned trial Court erroneously considered that there is bar under Section 18 of the Act of 1989 and rejected the application. The observation of the learned Special Court showing that bar is attracted deserves to be quashed and set aside.

5. Learned APP strongly opposed the said appeal on the ground that there is a specific allegations against the present appellant that she as well as the other co-accused have abused the informant on her caste. In view of that bar under Section 18 of the Act of 1989 is attracted and therefore, the application for grant of anticipatory bail is not maintainable.

6. Learned counsel for the respondent No.2 also raised a strong objection on the ground that the informant is a regularly harassed by the present applicant and the other co-accused which reveals from the recitals of the FIR. She was insulted and humiliated by the present appellant by abusing on her caste. There is a specific bar under Section 18 of the Act of 1989, therefore, the application for anticipatory bail deserves to be rejected.

7. He further invited my attention towards one complaint filed by Vimal Vinod Jadhav, Superintendent of Police, Buldhana, alleging against the present appellant that she has harassed her also as she has assisted the informant. Thus, he submitted that considering the circumstances under which the informant is saying in the most and there is apprehension of repeating of the said incident in future also. The application for grant of anticipatory bail deserves to be rejected and the order passed by the Special Court deserves to be maintained.

8. After hearing the learned counsel for the appellant and learned APP as well as learned counsel for respondent No.2, perused the recitals of the FIR from which it reveals that the only allegation against the present appellant is that she has turned the sentence “तुम्ही भंगी लोकं इथ कशाला राहतात तुम्हाला मी इथुन हाकलुन देते माझी मुलगी वकील आहे असे म्हणाली.”. Thus, except the reference of the caste there is no other abuses mentioned in the recitals of the FIR.

9. This Court in the case of ***Ratnakala Martadrao Mohite Vs. The State of Maharashtra and another*** reported in ***2020 ALL MR (Cri.) 334, Navnath s/o Dalsing Rathod @ Aade and others Vs.***

State of Maharashtra, Through Police Inspector Karmad Police Station, Aurangabad in Criminal Appeal No.968/2018 decided on 25.04.2019 have considered the scope of Section 18 and its applicability. The decision relied upon the judgment of *Kiran s/o Madhukar Ingle Vs. The State of Maharashtra and another* reported in **2019 ALL MR (Cri.) 2825** which dealt with the issue of applicability of Section 18 of the Act of 1989 which elaborately considered the issue and held that the provisions of Section 18 as well as newly amended Section 18A of the Act create bar for exercising the 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 decision it is held 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 an 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, there is a question which would arise as to what extent the Court would be justified to examine material to determine the *prima facie* case against the abused.

10. In the case of ***Vilas Pandurang Pawar and another Vs. State of Maharashtra and Others*** reported in ***2012 ALL MR (Cri.) 3743 (S.C.)*** wherein the Hon'ble Apex Court reiterated the similar principle of law and observed that no Court shall entertain the application for anticipatory bail in the offence registered under the provisions of the Act of 1989, unless it *prima facie* finds that such offence is made out. Thus, the principles underlying is that the application under Section 438 of the Cr.P.C. needs to be considered for ascertaining, whether there is material to make out a *prima facie* case for offence punishable under the Act of 1989.

11. In the light of the above said principles and the facts of the present case are taken into

consideration, admittedly, except the reference of the caste there is nothing mentioned regarding abuses uttered by the present appellant. The basic ingredients of Section 3(1)(r)(s) are that there must be “intentional insults” with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view. Merely calling a person by his caste name though may amount to insult of abuse to him, it cannot be said to be with intent to humiliate such person.

12. Considering except the reference of the caste there is no specific allegation against the present appellant. The ad-interim protection granted to the present appellant by order dated 26.04.2024 deserves to be confirmed, by allowing this appeal. Accordingly, I proceed to pass the following order: -

ORDER

(a) The appeal is allowed.

(b) In the event of arrest, in connection with Crime No.393/2023 registered with Police Station, Khamgaon, District Buldhana for the offence punishable under Section 506 read with Section 34 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s) of the Scheduled Castes and the Scheduled Tribes

(Prevention of Atrocities) Act, the appellant shall be released on ad-interim anticipatory bail on executing PR bond in the sum of Rs. 25,000/- with one solvent surety in the like amount.

(c) The appellant shall attend the concerned Police Station as and when required for the investigation purpose and shall cooperate with the investigating agency.

(d) The order passed by the learned Sessions Judge in ABA No.227/2023 is quashed and set aside.

13. The appeal is disposed of.

14. Fees of the appointed counsel be quantified as per rules.

(SMT. URMILA JOSHI PHALKE, J)