



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 726 OF 2024

Sarla W/o Natha Khandare
Age: 52 years, Occu:- Service,
R/o. Shahu Nagar, Hingoli,
Tq. & Dist. Hingoli

... APPELLANT
(Original Informant)

VERSUS

- 1] State of Maharashtra
Through Police Station Officer,
City Police Station, Hingoli
- 2] Nupur W/o Abhijeet Khandare
Age 28 yrs., Occu. H.H
- 3] Meenadevi W/o Gopal Agrawal
Age- 55 yrs, occ. H.H.,

Both R/o. Marwadi Galli, Hingoli

... RESPONDENTS
(Res.Nos. 2 & 3 original accused)

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Mr. U. L. Talegaonkar, Advocate for the Appellant
Ms Chaitali Chaudhari – Kutti, APP for Respondent No.1 - State
Mr. S. S. Bora a/w Mr. Vishal A. Bagadiya, Advocates for
Respondent Nos. 2 and 3

....

**WITH
CRIMINAL APPEAL NO. 533 OF 2024**

- 1] Gopal s/o Shankarlal Agrawal
Age:- 60, Occ.: Business,
R/o. Marwadi Galli, Hingoli,
Tq. & Dist. Hingoli

- 2] Vikram s/o Gopal Agrawal,
Age: 36, Occ.: Business,
R/o. Marwadi Galli, Hingoli,
Tq. & Dist. Hingoli

... **APPELLANTS**
(Orig. Accused)

VERSUS

- 1] State of Maharashtra
Through Superintendent of Police,
Hingoli, Dist. Hingoli
- 2] State of Maharashtra
Through Police Station Officer,
Hingoli City Police Station,
Dist. Hingoli
- 3] Sarla Natha Khandare
Age: 52, Occ.: Household,
R/o. Shahu Nagar, Hingoli,
Tq. & Dist. Hingoli

... **RESPONDENTS**
(Res.No.3 Orig. informant)

....

Mr. S. S. Bora a/w Mr. Vishal A. Bagadiya, Advocates for Appellants
Ms Chaitali Chaudhari – Kutti, APP for Respondent Nos.1 & 2 – State
Mr. U. L. Talegaonkar, Advocate Respondent No.3

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CORAM : Y. G. KHOBRADE, J.

RESERVED ON : 08.01.2025
PRONOUNCED ON : 22.01.2025

JUDGMENT :-

1. In Criminal Appeal No.726 of 2024, the Appellant/
informant invoked the jurisdiction of this Court under Section 14-A of
the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)
Act, 1989 and challenged judgment and order dated 15.06.2024,

passed by the learned Special Judge, Hingoli, in Criminal Misc. Application No.247 of 2024, thereby released the Respondent Nos. 2 and 3 accused on anticipatory bail in Crime No.0356 of 2024, registered with Hingoli City Police Station for the offences punishable under Sections 306, 507 read with Section 34 of the Indian Penal Code and Sections 3(2)(v), 3(2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Whereas, in Criminal Appeal No.533 of 2024, the Appellants/Accused have invoked jurisdiction of this Court under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and challenged the judgment and order dated 15.06.2024, passed by the learned Special Judge, Hingoli in Criminal Bail Application No.247 of 2024 in respect of rejection of their anticipatory bail in Crime No.0356 of 2024 registered with Hingoli City Police Station.

3. Having regard to the rival submissions of both the side, I have gone through the record. On face of record, it appears that the informant Smt. Sarla W/o Natha Khandare, lodged a F.I.R. with Hingoli City Police Station and alleging that her son Abhijeet Khandare was married with the Accused no. 1 Mrs. Nupur, the

daughter of Gopal Shankarlal Agrawal and Sister of Vikram s/o Gopal Agrawal, who are Appellant no. 1 & 2 in Criminal Appeal No.533 of 2024) on 18.03.2016.

4. Needless to say that, on 29.05.2024, the informant Smt. Sarla, (the Appellant in Cri. Appeal No.726 of 2024) lodged a report with Hingoli City Police Station, alleging that, on 18.03.2016, her deceased son Abhijeet and the accused No.1 Nupur, the daughter of accused No.2 Gopal Agrawal and accused No.4 Meenadevi Agrawal and sister of accused No.3 Vikram Agrawal, was solemnized inter-caste marriage. Therefore, the accused Nos. 2, 3 and 4 were not happy with said marriage. Therefore, her son Abhijeet with the accused No.1 Nupur started residing at Chhatrapati Sambhajinagar. In the month of May 2024, the accused No.1 Nupur visited at her parental house and stayed there for one week. On 21.05.2024, she (informant) and the accused Nos. 2, 3 and 4 were visited at Chhatrapati Sambhajinagar for attending the marriage of their relative. On 22.05.2024, at about 10.00 a.m., accused Nos. 2, 3 and 4 took her grand son (Samyak) and her daughter-in-law Smt. Nupur (Accused No. 1) in their vehicle and switched off Mobile of Accused no. 1 Nupur. The informant further alleged that, the accused persons

mentally tortured her son Abhijeet, due to which her son was mentally disturbed.

5. On 28.05.2024, at about 4.00 p.m., she visited Siddharth Colony and returned at her house at about 6.30 p.m. and found that door of her house closed from inside and her son Abhijeet was inside of the house. When She knocked the door but there was no response from her son Abhijeet. Therefore, with the help of the neighbours, door of her house was broken and found that her son Abhijeet committed suicide by hanging.

6. According to the informant, on 28.05.2024, her son Abhijeet committed suicide because since last 2 to 2 ½ years, all the accused persons were abusing her son Abhijeet on his caste by saying that, “he is from lower caste and due to solemnization of marriage by the deceased Abhijeet with the accused No.1 Nupur, they defamed in the society”. Therefore, her son committed suicide.

7. On the basis of said report, a F.I.R. No.0356 of 2024 registered against the accused persons with Hingoli City Police Station, for the offences punishable under Sections 306, 507, read with Section 34 of the Indian Penal Code and Sections 3(2)(v), 3(2)

(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

8. The Special Divisional Police Officer (S.D.P.O.)/ Investigating Officer, visited at the spot of incident and drawn spot panchanama. The dead body of deceased Abhijeet was referred to the autopsy under the request letter. The Investigating Officer conducted the investigation and recorded statements of the witnesses under Section 161 of Cr.P.C.

9. The accused persons preferred Criminal Bail Application No. 247 of 2024 under Section 438 of Cr.P.C. in Crime No.0356 of 2024. On 15.06.2024, the learned Special Judge, Hingoli, passed the impugned order and granted pre-arrest bail to the accused No.1 Nupur (daughter-in-law of informant) and accused No. 4 Meenadevi Agrawal, the mother of Smt. Nupur. However, anticipatory bail rejected in respect of accused No.2 Gopal Agrawal and accused No.3 Vikram Agrawal (Appellant Nos. 1 and 2 in Criminal Appeal No.533 of 2024).

10. On 21.06.2024, this Court (Coram: Shivkumar Dige, J.) passed an order and granted ad-interim anticipatory bail to accused

No.2 Gopal Agrawal and accused No.3 Vikram Agrawal (Appellants in Criminal Appeal No.533 of 2024) on certain terms and conditions.

11. Mr. Talegaonkar, the learned counsel for the Appellant/informant canvassed in vehemence that, Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act create a bar for grant of anticipatory bail under Section 438 of the Code of Criminal Procedure. However, the learned Special Judge failed to consider aim and object of Section 18 and granted anticipatory bail to accused Nos. 1 and 4, Nupur and Meenadevi, though substantial material produced on record, which shows that, the accused persons have humiliated and tortured the son of the informant, hence, the deceased Abhijeet committed suicide. Therefore, considering gravity of offence based on abusement on caste and issuance of threat to kill the deceased, the accused persons have committed the offence, hence, the Accused are not entitled to release on anticipatory bail.

12. The learned counsel for the informant/appellant further canvassed that, the informant specifically stated in F.I.R. that, the accused Nos. 2 and 4 i.e. Gopal and Meenadevi, were on visiting terms at her house and they always told her daughter-in-law Smt.

Nupur not to keep relations with the informant and her son belongs to lower caste, therefore, due mental torture on account of abuse on caste, the informant's son Abhijeet committed suicide.

13. The learned counsel for the informant/ appellant relied on *Prithvi Raj Chauhan V. Union of India, AIR 2020 SC 1036*, wherein, it has been held that the bar created under Section 18 and 18A against the grant of anticipatory bail in cases of atrocities against the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, shall not apply unless prima-facie case is made out.

14. Per contra, Mr. Bora, the learned counsel for the accused canvass that, marriage of accused No.1 Nupur and deceased Abhijeet was inter-caste marriage solemnized in the year 2016 and out of matrimonial relations, the accused No.1 and deceased blessed with male child Samyak. Due to inter-caste marriage, there were some resistance from the family of accused No.1 Nupur, but subsequently relations between the accused and deceased Abhijeet were cordial. So also, the accused persons were frequently visiting the accused No.1 Nupur and deceased Abhijeet who were residing at Chhatrapati Sambhajinagar. Similarly, deceased Abhijeet and the accused No.1 were also on visiting term at house of the accused persons. The

accused persons never abused their son-in-law Abhijeet on his caste any time before. However, Abhijeet (deceased) was working in private sector and he may be in financial crises. So also, there are no allegations that, the accused persons abused or insulted the deceased on his caste in past eight years of their marriage till the incident of suicide. However, on 28.05.2014 i.e. after a lapse of more than eight years from the date of marriage, the deceased committed suicide without any reasons. Therefore, the bar under Section 18 of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, does not create.

15. In support of these submissions, Mr. Bora relied on ***Shajan Skaria Vs. The State of Kerala and Ors, AIR 2024 SC 4557 = 2024 Cri.L.J. 4357***, wherein the Hon'ble Supreme Court considered the expression "arrest of any person" appearing in Section 18 of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act and observed in paragraph Nos. 41, 42, 43 and 44, as under:-

"41. It is clear from the aforesaid discussion that Section 18 of the Act, 1989 does not impose an absolute fetter on the power of the courts to examine whether a prima facie case attracting the provisions of the Act, 1989 is made out or not. As discussed, Section 18 stipulates that in any case which involves the arrest of any person on the accusation of having committed an offence under the Act, 1989, the benefit of anticipatory bail

under Section 438 of CrPC would not be available to the accused. We have deliberated on the significance of the expression “arrest of any person” appearing in the text of Section 18 of the Act, 1989 and are of the view that Section 18 bars the remedy of anticipatory bail only in those cases where a valid arrest of the accused person can be made as per Section 41 read with Section 60A of CrPC.

42. *Section 60A of CrPC provides that no arrest shall be made except in accordance with the provisions of CrPC or any other law for the time being in force and providing for arrest. Section 41 of CrPC confers upon the police the power to arrest without warrant in certain situations as specified therein. Sections 41(1)(b) and 41(1)(ba) respectively of CrPC read as follows:*

“41. When police may arrest without warrant.—(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person— xxx xxx xxx

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary—

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing.

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence.”

43. *A plain reading of the above provision shows that an arrest can be effected if there is a reasonable complaint, credible information or reasonable suspicion and the police officer has a reason to believe that such offence has been committed by the accused person and the arrest is necessary. It is worth noting that the words ‘complaint’, ‘information’ and ‘suspicion’ are qualified by the adjectives ‘reasonable’, ‘credible’ and ‘reasonable’ respectively. Similarly, the police officer is required to have a ‘reason to believe’ based on the information he has received that the accused person has committed the alleged offence.*

44. *It is settled law that arrest cannot be made merely because it is lawful to do so. The exercise of the power to arrest has been qualified by a twofold requirement – first, of having a reasonable belief that the accused person has committed the offence and secondly, that there is a need to arrest the accused person. This Court in Satender Kumar Antil v. CBI reported in (2022) 10 SCC 51 held that non-observance of the requirements stipulated under Section 41 and 41A of CrPC respectively before effecting arrest would entitle the accused to be enlarged on bail. The relevant paragraphs are reproduced hereinbelow:*

“25. *The consequence of non-compliance with Section 41 shall certainly inure to the benefit of the person*

suspected of the offence. Resultantly, while considering the application for enlargement on bail, courts will have to satisfy themselves on the due compliance of this provision. Any non-compliance would entitle the accused to a grant of bail.”

16. In the case in hand it is not in dispute that, on 18.03.2016, the deceased Abhijeet and the accused No.1 Nupur, solemnized inter-caste marriage. The deceased was a member of the Scheduled Caste and the accused No.1 is from Marwadi/Agrawal community, which is upper caste of the deceased.

17. No doubt, the informant alleged that due to inter-caste marriage, the accused Nos. 2, 3 and 4 were always torturing her son deceased Abhijeet. However, the informant has not given any specific incidence which might have occurred prior to date of committing suicide by her son.

18. On perusal of Case Diary it appears that, deceased Abhijeet, Smt. Nupur, the accused No.1 and their son Samyak were residing at Chhatrapati Sambhajinagar but, they were on visiting term at house of Informant as well as at house of the accused persons. The statements of witnesses does not suggest that, in past eight years from the date of their marriage till the date of incident, the accused

persons restrained the deceased Abhijeet from entering their house. As per the prosecution case, on 22.05.2024, there were talk between the witness Milind Wankhede and Accused No.2 Gopal Agrawal. The conversation collected by the Investigating Officer in electronic document i.e. Pen-drive.

19. The statements of witnesses shows that, on 18.03.2016, the marriage between the deceased Abhijeet and accused No.1 Smt. Nupur solemnized at Pune as per the customs and rites prevailing in the Buddhist society. After the marriage, accused No.1 and the deceased Abhijeet cohabited in house of matrimonial uncle of the deceased for a period of one year at Hingoli. On 16.12.2016, both of them blessed male child Samyak. The deceased was employed in a private company being an Engineer and the accused No.1 was working as coordinator with the Education Department. As per statement of accused No.1, her husband deceased Abhijeet was facing financial crises.

20. In the case of *Vilas Pandurang Pawar V/s State of Maharashtra and Others, 2012 (8) SCC 795* it is held that, Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast upon the Court to verify the averments in the

complaint and to find out whether an offence under Section 3(i) of the SC/ST Act has been prima facie made out.

21. In the case of ***Sumitha Pradeep V/s Arun Kumar C.K. and Another, 2022 SCC Online 1529***, the Apex Court was dealing with cancellation of anticipatory bail granted by High Court in a case involving offence under POCSO Act. In that circumstance, the Apex Court held that in many anticipatory bail matters, it is noticed that one common argument being canvassed that, no custodial interrogation is required and therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that, if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that, the prima facie case against the accused should be ignored or over looked and he should be granted anticipatory bail.

22. In the case of ***Dr. Subhash Kashinath Mahajan V/s State of Maharashtra and Another, (2018) 6 SCC 454*** the Hon'ble Supreme

Court considered the question whether there is an absolute bar to the grant of anticipatory bail under SC/ST Act and referred to several decisions including the decisions in the case of Vilas Pandurang Pawar (Supra) and Shakuntala Devi V/s Baljinder Singh (2014) 15 SCC 521 and observed in Para 56 as under:

“There can be no dispute with the proposition that mere unilateral allegation by any individual belonging to any caste, when such allegation is clearly motivated and false, cannot be treated as enough to deprive a person of his liberty without an independent scrutiny. Thus exclusion of provision for anticipatory bail cannot possibly, by any reasonable interpretation, be treated as applicable when no case is made out or allegations are patently false or motivated. If this interpretation is not taken, it may be difficult for public servants to discharge their bona-fide functions and in given cases, they can be blackmailed with the threat of a false case being registered under Atrocities Act, without any protection of law. Even a non public servant can be blackmailed to surrender his civil rights. This is not the intention of law. Such law cannot stand judicial scrutiny. It will fall foul of guaranteed fundamental rights of fair and reasonable procedure being followed if a person is deprived of life and liberty. In paragraphs 57 it was observed that exclusion of 438 Cr.P.C. applies when a prima facie case of commission of offence under the Atrocities Act is made out. On the other hand, if it can be shown that, the allegations are prima facie motivated and false, such exclusion will not apply.”

23. In ***State of M.P V/s. Ram Krishna Balothia (1995) 3 SCC 221***, it is held that exclusion of provision for anticipatory bail will not apply when no prima facie case is made out or the case is patently

false or mala-fide. This may have to be determined by the Court concerned in facts and circumstances of each case in exercise of its judicial discretion. In cases under the Atrocities Act, exclusion of right of anticipatory bail is applicable only if the case is shown to bonafide and that prima facie it falls under Atrocities Act and not otherwise. Section 18 does not apply where there is no prima facie case or to cases of patent false implication or when the allegation is motivated for extraneous reasons by following judgment reported in AIR 2018 SC 1498) as follows:

“79.1. Proceedings in the present case are clear abuse of process of Court and are quashed.

79.2. There is no absolute bar against grant of anticipatory bail in the cases under Atrocities Act, if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide. We approve the view taken and approach of Gujarat High Court in Pankaj D. Suthar and N.T. Desai and clarify the Judgments of this Court in Balothia and Manju Devi.

79.3. In view of acknowledged abuse of law of arrest in the cases under Atrocities Act, arrest of a public servant can only be after approval by the SSP appointing authority and of a non-public servant after approval of S.S.P. which may be granted inappropriate cases, if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.

79.4. To avoid false implication of an innocent, a preliminary inquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under Atrocities Act and the allegations are not frivolous or motivated.

79.5. Any violation of directions (79.3) and (79.4) will be actionable by way of disciplinary action as well as contempt.

79.6. The above directions are prospective.”

24. No doubt, the case diary does not suggest that, the deceased left any suicidal note. Therefore, making allegations about raising mental torcher against the deceased Abhijeet that he is belongs to lower Cast after laps of more than 8 years from his inter-caste marriage does not create a bar under Section 18 and 18A of the Atrocities Act for consideration of anticipatory bail u/s 438 of Cr.P.C. to deprive the accused for pre-arrest bail as per law laid down by the Hon’ble Supreme Court as discussed above. The prosecution has not brought sufficient material to show that, custodial interrogation of the Appellants/accused is necessary. In view of above discussion, the Appellants / accused in Criminal Appeal No.533 of 2024 are entitled for pre-arrest bail.

25. The learned Special Court passed the impugned order dated 5.06.2024 and granted anticipatory bail to the accused Nos. 1 and 4, which does not require for interference at the hands of this

Court. In view of above, I am inclined to grant Criminal Appeal No.533 of 2024, however, Criminal Appeal No.726 of 2024 filed by the informant is liable to be dismissed. Accordingly, I proceed to pass the following order:-

ORDER

- (i) Criminal Appeal No.726 of 2024 is hereby dismissed.
- (ii) Criminal Appeal No.533 of 2024 is hereby allowed.
- (iii) The impugned order dated 15.06.2024 passed by the learned Special Judge, Hingoli, in Criminal Bail Application No.247 of 2024, rejecting the application for pre-arrest bail in Crime No.0356 of 2024 registered with Hingoli City Police Station, in respect of accused Nos. 2 and 3 Gopal Shankarlal Agrawal and Vikram Gopal Agrawal, is hereby quashed and set aside.
- (iv) The interim order dated 21.06.2024 passed by this Court in Criminal Appeal No.533 of 2024, is hereby confirmed.

[Y. G. KHOBRAGADE, J.]

SMS