



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 1049 OF 2024

1. Nitin @ Pappu s/o Dinkar Kadam ... **Appellants**
Age 34 years, Occu: Agri.

2. Sachin @ Pappu s/o Dinkar Kadam
Age 34 years, Occu: Agri.
Both R/o Bindgihal Tq. &Dist. Latur

VERSUS

1. The State of Maharashtra
Through the Superintendent of Police
Latur

2. The Police Station Officer, ... **Respondents**
Shirur Anantpal Police Station,
Tq. Shirur Dist. Latur

3. Kalpana Shankar Chitte

Mr. S. S. Gangakhedkar, Advocate for the Appellants
Mr. S. M. Ganachari, APP for Respondent No.1 State
Mr. A. R. Syed, Advocate for Respondent No.3

CORAM : Y. G. KHOBRADE, J.

RESERVED ON : 03.03.2025

PRONOUNCED ON : 27.03.2025

JUDGMENT:-

1. Heard Mr. S. S. Gangakhedkar, the learned counsel for the Appellants, Mr. S. M. Ganachari, the learned APP for Respondent No.1 State and Mr. A. R. Syed, Advocate for Respondent No.3.

2. **Admit** and it is heard finally.

3. By the present Appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 read with Section 482 of the Bhartiya Nagarik Suraksha Sanhita, 2023, the appellants have prayed to quash and set aside the order dated 21.10.2024 passed by the learned Additional Sessions Judge, Nilanga Dist. Latur in Criminal Bail Application No. 120 of 2024. The appellants further prayed for anticipatory bail in Crime No. 0185/2024 registered with Shirur Anantpal Police Station, District Latur, for the offences punishable under Sections 115, 352, 351(2), 3(5) of the Bharatiya Nyaya Sanhita, 2023 read with Section 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. Having regard to the submissions canvassed on behalf of both sides, I have gone through the record. On the face of record it appears that, on 09.09.2024, the informant/respondent No.3 lodged the report with Shirur Anantpal Police station alleging that, on 06.09.2024, at about 3.30 p.m., she completed weeding in her Soybean field Survey No. 216 and while she was returning to her house and reached near field of accused and she found that accused laid grass on the way, due to which, she was stumbling, therefore, she asked the accused Nitin Kadam and Pappu Kadam as to why they laid grass on the way and obstructed way. However, both the accused abused her on her caste saying that, you people from the

Cobbler community are become arrogant and it will have to cut in pieces etc. The informant further alleged that, the appellants have assaulted her with kick and first blow, hence, she sustained injuries on her left elbow and invisible injuries on her body. On the basis of said report, Crime No. 0185/2024 registered with Shirur Anantpal Police Station, District Latur, for the offences punishable under Sections 115, 352, 351(2), 3(5) of the Bharatiya Nyaya Sanhita, 2023 read with Section 3(1)(r), 3(1)(s), 3(2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. In order to avoid arrest, the appellants accused have filed Criminal Bail Application No. 120 of 2024 before learned Additional Sessions Judge, Nilanga Dist. Latur and prayed for anticipatory bail in Crime No. 185 of 2024. However, on 21.10.2024, the learned Special Court passed the impugned order and declined to enlarge the appellants/accused on anticipatory bail.

6. On the face of record it appears that, the incident of abusement on caste to the informant at the hands of appellants/accused allegedly occurred near agricultural field of accused when the informant asked the accused as to why they laid grass in the way because she was facing problem while waking from the way. The incident allegedly occurred near agricultural field of the accused, which is the public place. However, the

FIR does not disclose that the incident of abusement on caste at the hands of accused was within the public view or said incident of abusement on caste is viewed by the public.

7. It is well settled principal of law that grant anticipatory bail under Section 438 of the Cr.P.C. is barred in respect of the offence under the Act of 1989. However, where the prima facie case is made out anticipatory bail can be granted in an appropriate circumstances with a cautious exercise of power. This aspect, whether the bar is attracted or not is dealt by the Full Bench of the Rajasthan High Court in ***Virendra Singh Vs State of Rajasthan, 2000 Cri. L.J. 2899***, wherein it is 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 the 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 First Information Report 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 to a complete bar against the entertainment of application of anticipatory bail which is unambiguously laid down under Section 18 of the Act of 1989, which is apparent from the perusal of the section itself.

8. This issue is also dealt by this Court in ***Ratnakala Martandrao Mohite Vs. The State of Maharashtra and another reported in 2020 ALL MR (Cri.) 334 and Navnath s/o Dalsing Rathod @ Aade and ors. Vs. State of Maharashtra*** through Police Inspector Karmad Police Station, Aurangabad and another in Criminal Appeal No.968/2018 dated 25.04.2019 and ***Jagdish Sajjankumar Banka Vs. State of Maharashtra and another reported in 2023 SCC OnLine Bom 581***. In the case of ***Vilas Pandurang Pawar and anr. Vs. State of Maharashtra and others reported in 2012 ALL MR (Cri) 3743 (S.C.)***, the Hon'ble Apex Court held that, no Court shall entertain an 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.P.C. It is still open to this Court to find out by looking into FIR as to whether prima-facie case is made out by the complainant against the appellants. Thus 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 offences punishable under the Act of 1989.

9. In the case of ***Hitesh Verma Vs. State of Uttarakhand and another Vs. State of Uttarakhand***, the Hon'ble Supreme Court held that, insult or intimidation to a person will not be an offence under the 1989 Act, unless such insult or intimidation is only on account of victim belonging to SC/ST. Therefore, it is necessary to make out the case that when member of vulnerable section of the society is subjected to indignities, humiliations and harassment, because of belonging to that vulnerable section of society and such abuse should be in public view and observed in paragraph 15, as under:-

“15. As per the FIR, the allegations 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 ingredient 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 the 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 and/or charge-sheet.”

10. In the Judgment delivered on 27.07.2022 in case of **Sk. Akbar Sk. Bismillah Vs. State of Maharashtra** Criminal Application (APL) No.953 of 2019 at Nagpur Bench of this Court, it is held that, it require to make out the case for threat and intimidation in conjunction with reference to the caste or community in the public view.

11. In recent Judgment delivered on 31.01.2025 by the Hon'ble Supreme Court in **Special Leave Petition (Criminal) No. 8778-8779 of 2024, Karuppudayar Vs. the State Ref. By the Deputy Superintendent of Police, Lalgudi Trichy & ors**, the Hon'ble Supreme Court considered the case of **Swaran Singh and others Vs. State, through Standing Cousnel and another, (2008) 8 SCC 435** and case of **Hitesh Verma Vs. State of Uttarakhand and another, (2020) 10 SCC 710** wherein it is held that, 'within public view', the place should be open where the members of the public can witness or hear the utterance made by the accused to the victim. If the alleged offence takes place within the four corners of the wall where members of the public are not present, then it cannot be said that it has taken place at a place within public view.

12. No doubt the incident of assault and abuseement on caste allegedly occurred on the field way near agricultural field of appellants,

however, the FIR does not disclose about watching the said incident by the public or such incident occurred within public view. Therefore, considering the law laid down in the cited case laws, I on view that, sections 18 and 18-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act does not create the bar to enlarge the appellants on anticipatory bail by invoking powers under Section 482 of the Bhartiya Nagarik Suraksha Sanhita, 2023.

13. On perusal of the case diary, it appears that there is nothing remained to be seized from the accused persons and there is no necessity to interrogate the accused persons. No doubt, it is canvassed on behalf of the Respondent No.3/ informant that, subsequent to registration of crime No. 185/2024, on 22.11.2024, the NCR No. 434 of 2024 and on 01.02.2025 NCR No. 38/2025 are registered against the appellants on the ground that they threatened the informant. However, registration of subsequent NCRs can not be the sole ground for denial of anticipatory bail.

14. In view of the above discussion, present appeal deserves to be allowed and the appellants are entitled for the anticipatory bail and it is necessary to quash and set aside the impugned order dated 21.10.2024 passed by the learned Additional Sessions Judge, Nilanga Dist. Latur in Criminal Bail Application No. 120 of 2024.

15. On 16.12.2024, this Court passed an order and enlarged the appellants/accused on interim anticipatory bail in Crime No. 0185/2024 registered with Shirur Anantpal Police Station, District Latur. There is no grievance of the Investigating Officer that the appellants/accused have not cooperated during course of investigation. Therefore considering the nature of offence it would be just and proper to continue interim order dated 16.12.2024 till conclusion of the trial. Hence, I proceed to pass the following order:

ORDER

- (i) Criminal Appeal No. 1049 of 2024 is allowed.
- (ii) The impugned order dated order dated 21.10.2024 passed by the learned Additional Sessions Judge, Nilanga Dist. Latur in Criminal Bail Application No.120 of 2024 is hereby quashed and set aside.
- (iii) The interim anticipatory bail granted by this Court on 16th December, 2024 shall remain in operation till conclusion of the trial in Crime No. 0185/2024 registered with Shirur Anantpal Police Station, District Latur on the same terms and conditions.

(Y. G. KHOBRADE, J.)