



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 703 OF 2019

1. Ram @ Rambhau Baburao Lakade,
Age: 60 years, Occu. Agril.,
R/o : Khamaswadi, Tq. Kallam,
Dist. Osmanabad.
2. Mahadeo Rambhau Lakade,
Age: 27 years, Occu: Agril.,
R/o : As above.
3. Uttam Krushna Nilakhe,
Age: 50 years, Occu: Agril.,
R/o : Nagzarwadi, Tq. Kallam,
Dist. Osmanabad.
4. Akash Subhash Zori,
Age : 20 years, Occu.: Agril.,
R/o : Khamaswadi, Tq. Kallam,
Dist. Osmanabad.
5. Umesh @ Ishwar Shivaji Chandane,
Age : 37 years, Occu. Agril.,
R/o : As above.
6. Sunil Mohan Sawant,
Age : 30 years, Occu: Agril.,
R/o : As above.

...APPELLANTS
(Ori. Accused Nos.1 to 6)

VERSUS

1. The State of Maharashtra,
Through Police Station, Shiradhon,
Dist. Osmanabad.
2. Jyotiram s/o Mahadeo Kharatmal,
Age: 30 years, Occu. Agril., & Labour,
R/o: Khamaswadi, Tq. Kallam,
Dist. Osmanabad.

...RESPONDENTS
(Respdt. No. 2 Ori. Informant)

...
Mr. Pramod Mule, Advocate for appellants
Mr. P.K. Lakhotiya, APP for respondent No. 1-State
Mr. Angad L. Kanade, Advocate for respondent No. 2
...

CORAM : K.K. SONAWANE, J.

DATE : 6th NOVEMBER, 2019.

JUDGMENT :-

1. Heard. **Admit.** The matter is taken up for its finality on merit with the consent of both sides.

2. This appeal is directed against the impugned Order of rebuffing the relief of pre-arrest bail to the appellants in Crime No. 91 of 2019 registered with Shiradhon Police Station, Taluka Kallam, District Osmanabad, under Sections 141, 142, 143, 146, 147, 323, 504 and 506 read with Section 149 of the Indian Penal Code (IPC) and under Sections 3(2)(va), 3(1)(f), 3(1)(g), 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter, referred to as "Act of 1989", for the sake of brevity). The appellants-accused preferred the present appeal by invoking remedy under Section 14-A(2) of the Act of 1989.

3. Genesis of the appeal culled-out in brief is that on 29-06-2019, complainant - Jyotiram Mahadeo Khartmal, resident of Khamaswadi, Taluka Kallam, District Osmanabad, approached to the Police of Shiradhon Police Station, District Osmanabad, and filed the report that he is residing in Khamaswadi along with his father, uncle and brothers. He is having land Gut No.75 admeasuring 1 Hectare 60 Are located within the vicinity of Nagzarwadi, Taluka Kallam, District Osmanabad. It has been alleged that on 29-06-2019, at

about 3.00 p.m., the appellants and other persons with vehicle - Tractor barged into his land Gut No. 75 and started activities of sowing the crops. At that time, the complainant made enquiry with them for what reason they are tilling the land. The appellants reprimanded the complainant and hurled casteist abuses to him and his father, uncle etc. with intention to insult and humiliate them on their caste within a public view. They have also given threats of life to the complainant etc.. There are allegations about assault causing hurt with the help of weapon sickle, Axe, etc., and intimidation to the complainant and others.

4. Pursuant to FIR, the Police of Shiradhon Police Station registered the Crime bearing No. 91 of 2019 and set the penal law in motion. The appellants, apprehending their arrest, filed Criminal Bail Application bearing No. 230 of 2012 under Section 438 of Code of Criminal Procedure, 1973 (Cr.P.C.) before the learned Additional Sessions Judge, Osmanabad. The learned Additional Sessions Judge considered the circumstances on record and rejected the application of the appellants on the ground that there are allegations sufficient to make out the offence under the Act of 1989 and in view of bar under Section 18 of the Act of 1989, the appellants are not entitled for relief of anticipatory bail in this case. The impugned order of rejection of application for anticipatory bail of the appellants is the subject-matter of present appeal.

5. The learned counsel for appellants vehemently submits that

the appellants are innocent of the charges pitted against them. They have not committed any crime, but they are falsely embroiled in this case to wreak vengeance on account of land dispute. According to learned counsel, the allegations made in the FIR are not sufficient to constitute the offence under the Act of 1989. Therefore, statutory bar under Section 18 and 18-A of the Act of 1989 would not be made applicable to preclude the appellants for availing benefit of Section 438 of the Cr.P.C. in this case. The learned counsel contends that the alleged contentious land Gut No. 75 admeasuring 1H. 60 R located at village Nagzarwadi Taluka Kallam is in possession of appellants. The first informant or his family members have no any concerned with it. The learned counsel drawn attention of this Court towards document of civil litigation bearing RCS No. 642 of 2001 instituted on behalf of father, uncle etc., of the first informant. The civil litigation was preferred for declaration of ownership and perpetual injunction against family members of the appellants in respect of land Gut No. 75 admeasuring 1H. 60R located at village Nagzarwadi Taluka Kallam. The learned Civil Judge, Junior Division, Kallam found reluctant to favour the father, uncle of the first informant for any sort of relief and observed that the family members of the first informant are not in possession of contentious land and they are also not entitled for relief of injunction into the matter. Accordingly, RCS No. 642 of 2001 came to be dismissed with cost. The learned counsel for appellants submitted that the provisions of Sections 3(1)(f)(g)(r)(s) and 3(2)(va) of the

Act of 1989 are not attracted to the facts and circumstances of the present case. Therefore, there is no any impediment to entertain the application for relief of pre-arrest bail filed on behalf of appellants. The learned counsel further submitted that there is no any recovery nor custodial interrogation of the appellants are essential for the sake of investigation. Therefore, impugned order rejecting application for bail by learned trial Court be set aside and appeal be allowed. He relied upon the judgment in ***Criminal Appeal No. 6 of 2019 (Shaikh Musa S/o Shaikh Hussain Vs. State of Maharashtra and another)*** and ***Criminal Appeal No. 05 of 2019 (Krishna Vs. State of Maharashtra and connected matter)***

6. Learned APP and learned counsel for respondent No. 2 raised, the objection and submitted that the Section 18-A of the Act of 1989 put embargo on the Court for exercise of discretion under Section 438 of the Cr.P.C.. The first informant and his family members are from SC/ST community. The appellants committed crime against them by wrongfully dispossessing and occupying their contentious land Gut No. 75. The appellants hurled casteist abuses and assaulted the first informant, his father and uncle to humiliate and insult them within a public view. The learned trial Court rejected the application for bail after considering the statutory bar under Sections 18 and 18-A of the Act of 1989. There is no error or illegality committed by learned trial Court. There is no propriety to entertain the appeal.

7. This Court on earlier occasion dealt with the issue of applicability of Sections 18 and 18-A of the Act of 1989 to entertain the application for pre-arrest bail filed under Section 438 of the Cr.P.C. In the proceeding of ***Criminal Appeal No. 787 of 2018 (Kiran Madhukar Ingle Versus State of Maharashtra and another)***, this Court in paragraphs No. 13 and 15 of said Judgment elaborately discussed the scope of statutory bar under Section 18 of the Act of 1989. It has also been observed that the application for anticipatory bail could be entertained only on the ground of inapplicability of provisions of Act of 1989 and it would be ascertained only on the basis of recitals of the FIR or complaint and not embarking upon an roving enquiry as to the reliability or genuineness or otherwise of the allegation made in the FIR. Paragraphs No. 13 and 15 of aforesaid judgment are reproduced as under:

"13. It is explicitly made clear 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 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, then question would arise as to what extent the Court would be justified to examine material to determine the prima facie case against him.

14. xx xx xx xx xx xx xx

15. *The exposition of law as referred above unequivocally pointer to the inference that the application for anticipatory bail can be entertained only on the ground of in applicability of the provisions of Act of 1989 and it would be ascertainable only on perusal of recitals of the FIR or complaint and not beyond that, because once it is gathered from the FIR that the applicant is accused of committing the offence prescribed under section 3 of the Act of 1989, a bar under section 18 of the Act of 1989 would instantly operate against him. Therefore, the Courts are not permitted to enter into roving enquiry in regard to sustainability of accusation nurtured on behalf of complainant. Moreover, further scrutiny by summoning the case diary or other material to test veracity of the allegations made in the FIR also not permissible under the law."*

8. In the present appeal, the prosecution applied the provisions of sections 3(2)(va) 3(1)(f)(g)(r)(s) of the Act of 1989 against the present appellants which reads as under:

"3. Punishments for offences of atrocities :-

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe :-

[(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine.]

3. Punishments for offences of atrocities :-

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe :-

(a) xxxxxxxx to

(e) xxxxxxxx

(f) *wrongfully occupies or cultivates any land, owned by, or in the possession of or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe, or gets such land transferred.*

(g) *Wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyments of his rights, including forest rights, over any land or premises or water or irrigation facilities or destroys the crops or takes away the produce therefrom.*

Explanation - For the purpose of clause (f) and this clause the expression "wrongfully" includes-

(A) *against the persons' will;*

(B) *without the person's consent;*

(C) *with the person's consent, where such consent has been obtained by putting the person, or any other person in whom the person is interested in fear of death or of hurt; or*

(D) *fabricating records of such land;*

(h) *xxxxxxx to*

(q) *xxxxxxx*

(r) *Intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view ;*

(s) *abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;*

Explanation : For the purposes of this clause, the expression "object" means and includes statue, photograph and portrait."

9. Intense scrutiny of the factual aspects of the present matter reveals that *prima facie* ingredients of penal provisions of the Act of

1989 do not match with the allegation nurtured on behalf of first informant in this case. The basic ingredients of Section 3(1)(r)(s) are that there must be "intentional insult" or "intimidation" with "intent" to humiliate a member of Scheduled Caste and Scheduled Tribe in any place within "public view". It is imperative to appreciate that *mensrea* is the decisive factor in the offence under Act of 1989. In the case of ***Shantabai Vs. State of Maharashtra*** reported in ***1982 Cr.L.J. 872***, it was held that merely calling a person by his caste name though may amount to insult or abuse to him, it cannot be said to be with intent to humiliate such person within a public view. In the matter in hand, it has been alleged that the appellants hurled abuses to the first informant, his father, uncle by uttering the word " *Dhorgya*". If the word " *Dhorgya*" is taken out from FIR for moment, then rest of the conversation appears from the recitals of FIR demonstrate the threat or intimidation but does not indicate that there was any *mensrea* or intention to humiliate the complainant-first informant on his caste within public view.

10. Admittedly, there was land dispute in between families of the appellants and first informant. It is worth to mention that family members of first informant did not succeed in the civil litigation. In contrast, the Civil Court observed that the plaintiffs i.e. family members of the first informant failed to prove their title and possession over the contentious land Gut No. 75. Therefore, it cannot be perceived that the appellants attempted wrongfully to dispossess or occupy the agricultural land of family members of the

first informant. In such circumstances, ingredients of Sections 3(1)(f)(g), *prima facie*, could not be made applicable in the present case against the appellants.

11. The provisions of Section 3(2)(va) of the Act of 1989 contemplate commission of offence against the persons or property belong to the member of Scheduled Caste and Scheduled Tribe. As referred above, the decree passed by the Civil Court in the suit bearing RCS No. 642 of 2001 reflects that the contentious property was owned and in possession of family members of the appellants. In such circumstances, the provision of Section 3(2)(va) of the Act of 1989 would not create statutory embargo as prescribed under Sections 18 and 18-A of the Act of 1989 in this case.

12. Taking into consideration all the circumstances discussed above, there is no impediment to conclude that in spite of bar under Section 18 of the Act of 1989, for invocation of powers under Section 438 of the Cr.P.C. it is still open to this Court to find out by looking to the recitals of FIR of the case itself, as to whether *prima facie* case is made out by the first informant against present appellants. As referred supra, the scrutiny of factual score reveals that there are no sufficient material available on record *prima facie* to arrive at the conclusion that the allegations nurtured on behalf of prosecution constitute offence under the Act of 1989 against appellants. Therefore, there is no impediment to entertain the application filed under Section 438 of Cr.P.C. for relief of pre-arrest

bail on behalf of appellants.

13. In regard to offences levelled against the appellants under Sections 141, 142, 143, 146, 147, 323, 504 and 506 read with Section 149 of the IPC, it is to be noted that custodial interrogation of the appellants is not essential as well as there would not be any recovery from appellants for the sake of investigation. However, the appellants has shown inclination to co-operate with the Investigating Officer during the course of investigation. In such circumstances, it would justifiable to allow the bail application filed before learned trial Court on behalf of the appellants.

14. In sequel, the appeal stands allowed. The impugned order dated 11-07-2019 passed by the learned Additional Sessions Judge, Osmanabad, in Criminal Bail Application No. 230 of 2019 is hereby quashed and set aside. The application of the appellants filed under Section 438 of Cr.P.C. for their pre-arrest bail before the learned Sessions Court is hereby granted. The present appellants be released on bail in the event of their arrest in connection with Crime No. 91 of 2019 registered with Shiradhon Police Station, Taluka Kallam, District Osmanabad for the offence punishable under Sections 141, 142, 143, 146, 147, 323, 504 and 506 read with Section 149 of the Indian Penal Code and under Sections 3(2)(va), 3(1)(f), 3(1)(g), 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on furnishing PR bond of Rs.20,000/- (Rupees Twenty Thousand) with one solvent

surety of like amount each. It is stipulated that appellants-applicants shall not indulged, directly or indirectly, in any kind of activities of tampering with the evidence of the prosecution witness. The appellants-applicants shall attend the Police Station Shiradhon, tahsil Kallam, District Osmanabad, on every Sunday in between 11.00 a.m. to 3.00 p.m. till filing of the charge-sheet and cooperate the Investigating Officer for the sake of investigation into the crime. Inform the concerned Investigating Officer accordingly.

15. The present Criminal Appeal stands disposed of in above terms. No order as to costs.

Sd/-

[K. K. SONAWANE]
JUDGE

MTK.
