

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

CRIMINAL APPEAL NO.446 OF 2023

1. Digambar s/o Chango Mankar
Aged about 56 years,
Occupation – Agriculturist,
2. Kamlakar s/o Chango Mankar,
Aged about 50 years,
Occupation – Agriculturist,
3. Vikas s/o Digambar Mankar,
Aged about 25 years,
Occupation – Agriculturist

All R/o. Ridhora Jahangir,
Tq. Motala, District Buldhana

...APPELLANTS

VERSUS

1. State of Maharashtra,
through Police Station Borakhedi,
District Buldhana
2. Nimbaji s/o Bhimrao Gaikwad,
Aged about 42 years,
Occupation – Agriculturist,
R/o Bhortek, Tq. Motala,
District Buldhana

...RESPONDENTS

Shri H.M. Mohta, Advocate for the appellants.
Shri I.J. Damle, APP for the State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : JULY 31, 2023.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel for the parties.

2. Present appeal is preferred against the order passed by the Special Court by which the anticipatory bail application of the appellants bearing Misc. Criminal Application No.131/2023, is rejected.

3. As per the contention of the appellants they are apprehending arrest at the hands of police as crime is registered against them on the basis of report lodged by Nimbaji Bhimrao Gaikwad who has alleged that he is having his agricultural land. The dispute between the present appellants and their family members is going on and civil suit is also filed. On 27th May, 2023, the present appellants entered in his agricultural field and applicant Nos.1 and 2 namely Digambar Mankar and Kamlakar Mankar abused him on his caste by uttering “का रे धेडग्या, महा-या तु इथे कशाला आला हा आमचा आपशी मामला आहे तु इथुन निघुन जा त्यावेळी मी त्यांना म्हणालो कि तुम्ही मला जातीवाचक शिवीगाळ करू नका” and assaulted him by fists and kick blows. On the basis of said report, police have registered the offence.

4. As per the contention of the present appellants the agricultural land belongs to the sister-in-law of the present appellant and the civil dispute is pending between them bearing Civil Suit No.60/2022.

Regarding the incident dated 27/05/2023, present applicant Digambar Mankar has lodged the report against the informant Nimbaji Gaikwad and to give the counter blast to the said FIR this false FIR is lodged against him and the other applicants.

5. Considering the allegation, their custodial interrogation is not required and they be protected by granting anticipatory bail. It is further contended that as there was no intention to humiliate the informant and the incident has not occurred within the public view, the bar under Section 18 or 18A is not attracted. In view of that the applicant be protected by granting anticipatory bail.

6. Said prayer of anticipatory bail is strongly opposed by the State on the ground that there is a bar under Section 18 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act of 1989' for short). There is specific allegation against the applicant Digambar and Kamlakar that they abused the informant within the public view and thereby the provisions of Act of 1989 are attracted. In view of Section 18 and 18A there is a bar, and therefore, the application as far as applicant Nos.1 and 2 is concerned deserves to be rejected.

7. After hearing the learned Counsel for the appellants to some extent, this Court has expressed disinclination to entertain the

application of appellant Nos.1 and 2. Learned Counsel for the appellants seeks permission to withdraw the application to the extent of appellant Nos.1 and 2.

8. As far as appellant No.3 – Vikas s/o Digambar Mankar is concerned, general allegations are made against him in the FIR. As far as the role of the applicant No.3 – Vikas is concerned, there is no allegations that he either abused the informant on his caste. The only allegation made against him is that he assaulted the informant by means of fists and kick blows. As far as bar under Section 18 and 18A is concerned to entertain the application of applicant No.3 is concerned, now it is well settled in view of the Full Bench judgement of the Rajasthan High Court which is followed by this Court also in catena of decisions in *Virendra Singh Vs. State of Rajasthan [2000 Cri.Law Journal 2899]* wherein the Rajasthan High Court held that it was to be borne in mind that if a person is even alleged of accusation of committing an offence under the S.C. S.T. 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. The similar view is expressed by this Court in the case of ***Ratnakala Martandrao Mohite Vs. The State of Maharashtra and anr. 2020 ALL MR (Cri) 334*** wherein by referring the judgment the Full Bench of the Rajasthan High Court and various other judgments of this Court as well as the Hon'ble Apex Court held that in case of ***Kiran s/o Madhukar Ingle Vs. State of Maharashtra and anr. 2019 ALL MR (Cri.) 2825*** which dealt with the issue of applicability of Section 18 of the Act of 1989 elaborately and held that the provisions of Section 18 as well as newly amended Section 18(A) of the Act create a bar for exercising the jurisdiction under Section 438 of the Cr.P.C. However, it would not preclude the concern 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 paragraph Nos.13 and 15 of the *Kiran Ingle's* case this Court observed that 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.

9. Thus, in view of the catena of decisions wherein the view taken is that no Court shall entertain the application for anticipatory bail under the provisions of Act of 1989 unless it *prima facie* finds that such an offence is made out. Similar principles also laid down by this Court in various decisions. In such circumstances, it is evident that in spite of bar under Section 18 of the Act of 1989 for invocation of 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 appellant.

10. In the light of the aforesaid well settled legal position if the recitals of the FIR in the present case is consider admittedly, there is no allegation against appellant No.3 Vikas to attract the provisions of Section 3 under the Act of 1989. As far as the offence under Section 323, 504, 506 read with Section 34 of IPC, only allegation against him is that he has assaulted the informant by means of fists and kick blows. Thus, custodial interrogation of applicant No.3 Vikas is not required as nothing is to be recovered from him. The interrogation purpose can be served by imposing condition of attendance to the police station. In view of that appeal deserves to be allowed to the extent of applicant No.3. Hence, I proceed to pass the following order :

- (i) The appeal is partly allowed.
- (ii) The appeal is withdrawn to the extent of appellant Nos.1 and 2 is concerned.
- (iii) In the event of arrest, appellant No.3 – Vikas s/o Digambar Mankar in connection with Crime No.255/2023 registered at police station Borakhedi, District Buldhana for the offence punishable under Sections 324, 323, 504 and 506 read with Section 34 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, be released on anticipatory bail on executing P.R. Bond in the

sum of Rs.25,000/- (Rs. Twenty five thousand) with one surety in the like amount.

(iv) The appellant No.3 – Vikas s/o Digambar Mankar shall attend concerned Police Station as and when required for the investigation purpose.

(v) The appellant No.3 – Vikas s/o Digambar Mankar shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper the prosecution evidence.

(vi) The appellant No.3 – Vikas s/o Digambar Mankar shall furnish his Cell phone number and address along with the address proof before the Investigating Officer.

11. The appeal is disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*