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

CRIMINAL APPEAL NO.701 OF 2019

Rajendra s/o Pundlik Nale,
Age: 35 years, Occu.: Govt.
Service, At present working as
Assistant conservator of Forests,
Aurangabad, Tq. and Dist. Aurangabad,
Original R/o: 129, Mahadev Nagar,
Village Kolki, Tq. Phaltan,
Dist Satara.

.. APPELLANT
(Orig. Accused)

VERSUS

- 1) The State of Maharashtra
- 2) The Superintendent of Police,
Nanded.
- 3) The Sub Divisional Police Officer,
Mahur Sub Region, Charge Kinwat/
Investigating Officer, Dist. Nanded.
- 4) The Police Sub Inspector,
Kinwat Police Station, Kinwat,
Tq Kinwat, Dist. Nanded.

...RESPONDENTS
(No.4- Original
Informant)

...

Mr. Deshmukh Rajendra S. Advocate for Appellant

Mr. SJ Salgare, APP for Respondent-State.

CORAM : P.R. BORA, J.

DATED : 5th August, 2019.

ORAL JUDGMENT:-

1. Heard Shri Deshmukh, learned counsel
appearing for appellant and learned APP for State.

2. Order dated 4th July, 2019 passed by
Additional Sessions Judge-1, Nanded in Misc.

(2)

Criminal Bail Application No.522/2019, is challenged in the present appeal.

3. The aforesaid bail application was filed by the appellant, seeking pre-arrest bail under Section 438(1) of the Code of Criminal Procedure (herein after referred to as the Code) in connection with Crime No.140/2019 registered against him at Police Station, Kinwat for the offence punishable under Section 4 of the Scheduled Castes, Scheduled Tribes (Prevention of Atrocities) Act, 1989 (herein after referred to as the said Act).

4. The learned Additional Sessions Judge has rejected the said application, observing that, since the punishment prescribed for the offence under Section 4 of the said Act is of imprisonment up to one year, in view of 1st Schedule to the Code, the said offence has to be treated as bailable one.

5. Shri Deshmukh, learned counsel appearing for the appellant, submitted that the learned

(3)

Additional Sessions Judge has committed an error in rejecting the application filed by the appellant on the ground that the offence charged against him, since is bailable one, the application, seeking pre-arrest bail is not entertainable. The learned counsel pointed out that while passing such order and while referring to Part-II of Schedule-First of the Code, the trial court has ignored that the offence punishable with imprisonment of less than three years or with fine only, is made bailable, provided it is triable by the Court of a Magistrate. The learned counsel submitted that the offences under the Atrocities Act, including the offence under Section 4 of the said Act, are triable by a Special Court. The learned counsel pointed that as defined under Section 2(d) of the Atrocities Act, "Special Court" means a Court of Session specified as a Special Court in section 14 of the said Act. The learned counsel submitted that only on the basis of the quantum of punishment, it cannot be held that the offence under Section 4 of the Atrocities Act is bailable.

6. For the reasons, as aforesaid, according

(4)

to the learned counsel, the application filed by the appellant under Section 438 of the Code, was perfectly maintainable. The learned counsel further submitted that even though Section 18 of the Atrocities Act provides that nothing under Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under the Atrocities Act, the judicial pronouncements have settled the legal position that if prima facie it appears to the court that no offence, as alleged under the provisions of the Atrocities Act, is made out, the discretion can be exercised even by the Sessions Court. The learned counsel further submitted that even after insertion of Section 18-A in the Atrocities Act, as held by the Hon'ble Division Bench of this Court in the case of Lahu Bhosale Vs. State of Maharashtra and Anr. - Criminal Appeal No.194/2019, decided on 3.4.2019, the power of the Session Court, is not taken away to entertain the application under Section 438 of the Code, if the circumstances so warranted. According to learned counsel, thus viewed from any angle, the trial court shall not

(5)

have held the application filed by the appellant not entertainable.

7. Learned APP Shri Salgare supported the impugned order.

8. The question, which falls for determination in the present appeal is, whether the application under Section 438 of the Code can be entertained by the Special Court, constituted under Section 14(1) of the Atrocities Act, in an offence under Section 4 of the said Act, which as per the classification provided in Part-II of the First Schedule to the Code falls in the category of bailable offence?

9. The Atrocities Act does not provide the definition of "bailable offence". The said definition is provided under the Code. The Atrocities Act does not exclude applicability of the Code, except as provided under section 18 of the said Act. In the circumstances, to determine as to which of the offences are bailable and which are non-bailable, one has to fall back on the

(6)

definition in the Code. Section 2(a) of the Code defines "bailable offence" thus, -

"bailable offence" means an offence which is shown as bailable in the first Schedule, or which is made bailable by any other law for the time being in force"

10. First Schedule appended to the Code provides classification of offences. It is in two parts. Part-I deals with the offences under the IPC whereas Part-II pertains to the offences against other law. Offence under Section 4 of the Atrocities Act would fall in the category of offences against other laws. Part-II would, therefore, be applicable for the said offence. Part-II of Schedule-First of the Code classifies the offences punishable with imprisonment for less than three years or only with fine, to be bailable offences.

11. Section 4 of the Atrocities Act prescribes punishment for neglect of duties by a public servant, as enumerated in sub-section (2) of the said section. The offence under the said section is made punishable with imprisonment for a

(7)

term which shall not be less than six months, but which may extend to one year. Having regard to the quantum of punishment provided for the offence under Section 4 of the Atrocities Act, the said offence falls in the category of bailable offence.

12. The offences under the Atrocities Act are no doubt made triable by the Special Court and as defined under Section 2(d) of the said Act, the Special Court means, a Court of Session, specified as a Special Court in Section 14 of the said Act. However, merely because the offence under Section 4 of the said Act is also triable by the Court of Session, the nature of the said offence, as classified under the provisions of the Code to be a 'bailable' one, would not change. The same has to be treated as a bailable offence.

13. Once it is held that the offence under Section 4 of the Atrocities Act is bailable, it goes without saying that the application filed by the appellant under Section 438 of the Code, seeking pre-arrest bail in an offence registered against him, under said Section, would not be

(8)

maintainable. It does not appear to me that the learned Additional Sessions Judge has committed any error in rejecting the application filed by the appellant.

14. It is clarified that the offence under Section 4 of the Atrocities Act being bailable, in the event of his arrest, the appellant shall be liable to be released forthwith, if he shows his readiness to furnish the surety.

15. In the result, the appeal stand dismissed with the observations as above.

(P.R. BORA)
JUDGE

BDV