

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

907 CRIMINAL APPEAL NO.271 OF 2021

**VILAS@ KACHRU S/O UTTAMRAO SOTAM
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...

Advocate for Appellant : Mr. Patil Ujwal Subhash.
APP for Respondent No. 1/State : Mr. P. N. Kutti.
Advocate for Respondent No. 2 : Mr.R. N. Bhapkar.

CORAM : MANGESH S. PATIL, J.

DATE : 27.07.2021.

PER COURT :

Heard.

2. Admit. With the consent of both the sides the matter is heard finally at the stage of admission.

3. Being aggrieved and dissatisfied by rejection of his application under Section 438 of the Code of Criminal Procedure for anticipatory bail in connection with Crime No. I -115/2021 registered with Phulambri Police Station, District Aurangabad, for the offences punishable under Section 324, 323, 504, 506 read with Section 34 of the Indian Penal Code and under Section 3(1)(r), 3(1)(s), 3(2)(v) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter 'the Atrocities Act'), by the Special Judge by her order dated 19.05.2021, the appellant has preferred this appeal under Section 14A(2) of the Atrocities Act.

4. Shortly stated the allegations are to the effect that the respondent No. 2 has been residing at village Wanegaon Tq. Phulambri. On 05.05.2021 at about 7 p.m. the appellant, his father and the other two accused came to his house and started questioning him as to why his wife had collected fodder

from their agricultural bund. They thereafter assaulted him as also his mother and wife with slaps. Co-accused Mangsh gave a blow of stick on his head. The informant and his family went to the police station and the F.I.R. was registered at about 2124 hours of the same day but only for the offences under the Indian Penal Code. A supplementary statement of the respondent No. 2/informant was recorded in the same night at 00 hours of 06.05.2021 wherein he alleged about the appellant and the co-accused also having hurled abuses on caste lines and insulted them and they all were knowing that his family belongs to a scheduled caste. In view of such supplementary statement the offences under the Atrocities Act were included. The appellant is now apprehending arrest.

5. The learned advocate for the appellant vehemently submits that it is a clear case of concoction. Assuming that some incident had taken place as alleged in the F.I.R. as it was originally lodged, the fact that the provisions of the Atrocities Act were not rightly invoked at that stage but were added subsequently by recording a supplementary statement clearly hints at such concoction with an ulterior motive. Therefore there is every room to doubt applicability of the provisions of the Atrocities Act and consequently, in view of the decision in the case of *Prathviraj Chauhan Vs. Union of India and Anr.; (2020) 4 SCC 727* bar under Section 18 and 18A of the Atrocities Act would not get attracted.

6. The learned advocate would submit that barring Section 324 of the Indian Penal Code rest of the offences under the Indian Penal Code with which the appellant is being charged areailable. The allegations of Section 324 of the Indian Penal Code for causing assault on the informant with a stick have been attributed to co accused Mangesh and not to the appellant and therefore his custodial interrogation for completing the investigation is not necessary. The learned advocate, therefore, submits that ignoring all these facts and circumstances the learned Special Judge has illegally refused to grant anticipatory bail. The order being illegal it may be quashed and

reversed.

7. Lastly, the learned advocate would submit that the appellant is in the employment and only with a view to harass him that he is being implicated.

8. The learned A.P.P. and the learned advocate for the respondent No. 2 oppose the request for anticipatory bail. They would point out that though the allegations regarding commission of the offences under the Atrocities Act have been levelled belatedly, the delay is minimal. Within couple of hours of the lodging of the F.I.R. the supplementary statement was recorded and these offences were included. At this juncture not much be read into it. They would further submit that though hurling of abuses has taken place allegedly in chorus and therefore even if a doubt is raised about commission of the offences under Section 3(1)(s) and 3(1)(r), simultaneously, since the offences under the Indian Penal Code being invoked are scheduled offences under the Atrocities Act, when the knowledge about caste of the informant and his family members is being attributed to the appellant and the co-accused, the offences under Section 3(2)(v), 3(2)(va) of the Atrocities Act would get attracted and if that be so the bar under Section 18 and 18A of the Atrocities Act would be applicable. No fault can be found in the impugned order refusing the grant anticipatory bail.

9. I have carefully considered the rival submissions and the papers of the investigation. The question as regards the scope and ambit of the bar under Section 18 and 18A of the Atrocities Act stands well settled by the decision of the Supreme Court in the case of ***Prathviraj Chauhan*** (supra). If after considering the allegations in the F.I.R. and the other material *prima facie* it does not appear that the offences under the Atrocities Act have been committed the bar would not apply.

10. Bearing in mind the above proposition if one examines the matter in hand, though the allegations regarding commission of the offences under the Atrocities Act have been levelled belatedly, the delay is barely of couple

of hours and at this juncture simply on that ground one cannot brush aside the entire allegations.

11. So far as the allegations regarding hurling of abuses on caste lines and causing insult in a public view which are the offences punishable under section 3(1)(r) and 3(1)(s) of the Atrocities Act it could be doubtful in as much as the incident is alleged to have taken place inside the respondent No. 2/informant's house.

12. However once it is alleged that the appellant and the other accused were knowing that the respondent No. 2 and his family belongs to a scheduled caste, which is an allegation levelled in his supplementary statement and it is alleged that the assault was carried out, *prima facie* it would constitute an offence punishable under Section 3(2)(v) and 3(2)(va). Therefore, applying the parameters laid down in the case of ***Prathviraj Chauhan (supra)*** it cannot be said that *prima facie* the offence under the Atrocities Act cannot be made out.

13. Needless to state that it is only the time that would tell if the prosecution would be able to establish all the necessary ingredients for constituting the offences. The fact remains that going by the record as it stands now there is a *prima facie* material revealing necessary ingredients for constituting the offences under the Atrocities Act and consequently there would be bar under Section 18 and 18A of the Atrocities Act for granting anticipatory bail.

14. There is no illegality in the impugned order taking a reasonable view on these lines.

15. The Appeal is dismissed.

(MANGESH S. PATIL, J.)

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