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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1034 OF 2021

Anil Jeevan Mangela

... Appellant

Vs.

State of Maharashtra & Anr.

... Respondents

Mr.Sandeep Satkar i/b Sachin M. Bandkar for the Appellant.

Mr. Shashikant Damodarlal Chandak with Kanchan Shashikant Chandak, Deepam Morzaria and Lavanya Vallakati for respondent no.2.

Mr. S. V. Gavand, APP for State.

IO Mr. Jayprakash Bhosale, ACP, Santacruz Division.

CORAM: ABHAY AHUJA J.

DATE : 27TH DECEMBER 2021

[VACATION COURT]

P.C. :

1. The appellant is seeking interim relief of anticipatory bail in respect of apprehended arrest pursuant to CR No. 459 of 2021 lodged at Santacruz Police Station for the offences punishable under Sections 354, 504 and 506 of the Indian Penal Code and Sections 3(1)(4), 3(1)(5), 3(1)(w)(i), 3 (2) (va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (the "Atrocities Act"). Though the FIR does not mention the offences

punishable under Sections 3(1)(r) and 3(1(s) of the Atrocities Act, the same has been mentioned in the say of the investigating officer.

2. The appellant had earlier made an application for anticipatory bail before the Sessions Court vide ABA No. 2369 of 2021, which was rejected vide order dated 22nd November, 2021. Thereafter, the appellant has approached this Court.

3. Brief facts in the matter are that the appellant is an accused under the aforementioned sections threatening informant's husband since 29th March, 2021 to take over the possession of the shop named Sharif General Store where the informant's husband is administrator. On 25th October, 2021 the informant under the belief that the appellant and two other persons conducted meeting in the said shop for sale of the shop, went near the car parked adjacent to the wine shop on Juhu Tara Road and inquired from the two persons as to why they had come to the shop, at which time the appellant came there and abused the informant as mentioned in the FIR using vulgar language referring to her as scheduled caste in public view and also holding her by the neck, with threats to her life.

4. Learned APP has also handed over a copy of the CCTV footages panchanama /transcript dated 24th November, 2021 where it is stated that the incident was captured by a Government CCTV camera confirming that the place of the above incident, took place at a public place.

5. Learned counsel for the appellant is not able to refute the above said facts.

6. Sections 3(1)(r) and 3 (1)(s) of the Atrocities Act are quoted as under:-

“3. (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe –

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(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;

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shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.”

7. Section 18 of the Atrocities Act is also quoted as under:-

“18. Section 438 of the Code not to apply to persons committing an offence under the Act.—Nothing in 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 this Act.”

8. The said Section 18 specifically bars application of the provisions of anticipatory bail under Section 438 of the Cr. P. C. in relation to the offence committed under the Atrocities Act. The Hon'ble Supreme Court has expressed a similar view in **Prathvi Raj Chauhan Vs. Union of India and Ors. (2020) 4 SCC 727**.

9. Section 18 as well as the decision of the Hon'ble Supreme court in the case of **Prathvi Raj Chauhan (supra)** clearly apply to the facts of this case.

10. This is also not a case of exception to the aforesaid rule where for preventing misuse of law, proceedings can be quashed, even under the Atrocities Act.

11. In my *prima facie* view, the FIR read with the say of the investigating officer discloses that the informant belonging to the

scheduled caste, has been abused and/or humiliated referring to her caste in public view and consequently the provisions of Section 438 of the Cr.P.C. would not apply to this case.

12. Learned APP submits that the investigation is still going on and the custodial interrogation of the appellant would be necessary in the matter.

13. In the circumstances, this Court is not inclined to grant anticipatory bail to the appellant at this stage. Interim prayer for Anticipatory bail is therefore rejected.

(ABHAY AHUJA, J.)