

2] The Appellants filed an Application for anticipatory bail before the Additional Sessions Judge, Thane, which came to be rejected by pressing into service bar under Section 18 of the Act.

Being aggrieved by the perfunctory rejection of the Application, without taking into consideration the latest legal position as propounded in the case of **Prathviraj Chauhan vs. Union of India, (2020) 4 SCC 727**, the Application been has filed under Section 14A of the Act.

3] Heard the learned counsel for the Appellant and the learned counsel for the complainant.

The learned counsel for Respondent No.2 has placed on record Affidavit in Reply, by submitting that bar under Section 18 of the Act of 1989, would not permit entertaining of the Application seeking to be released on bail and particularly when the accusations levelled are serious and it is also the submission of the learned APP for the State.

This Court, while hearing the application on 13.01.2023, cursorily referred to the FIR and recorded the submission of the learned counsel for the Appellants, that Respondent No.2 was mixing up two issues. and by noticing that the subject matter of the Appeal is result of the order passed under Section 156(3) of the Cr.P.C., the accused were admitted to interim protection, which continue till date.

4] With the able assistance of the respective counsel, I have perused the FIR and also interim order.

Before I turn to the contents of the same, it is necessary to note that the offence punishable against the present Appellants is under Section 3(1)(za)(E) and 3(1)(zc) of the Act of 1989. The said provision being included in Section 3, punishes certain acts being construed as atrocity, committed on the members of scheduled caste or scheduled

tribe, reads thus :

Section 3(1)(za)(E)

3. Punishments for offences of atrocities : (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe -

(za) obstructs or prevents a member of a Scheduled Caste or a Scheduled Tribe in any manner with regard to -

(E) practicing any profession or the carrying on of any occupation, trade or business or employment in any job which other members of the public, or any section thereof, have a right to use or have access to.

Section 3(1)(zc)

3. Punishments for offences of atrocities : (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe -

(zc) imposes or threatens a social or economic boycott of any person or a family or a group belonging to a Scheduled Caste or a Scheduled Tribe.

5] The question that arises for consideration is, whether case is made out for arraigning the Applicants as accused in the backdrop of the facts that are narrated in the complaint.

The complaint lodged by the complainant refer to certain offences being registered against the Appellants, but, I do not think that it has any relevance with the second part of the FIR, where the accusations are levelled in respect of some Tender work, in which the complainant as well as the Appellants participated.

The Thane Municipal Corporation floated a Tender for its work and it was responded to by both, the Appellants and complainant. The complainant submitted his Tender through M/s.Omkar Enterprises, whereas, Appellant No.1 submitted his Tender through M/s.Mayuresh Motiram Jadhav. On tender process being carried out, 5 works were allotted to the Accused No.1, whereas, 1 work was allotted in favour of

the complainant. The complainant then noticed that while making payment of security amount towards the Tender, the Appellant had issued cheque in the name of his son, instead of issuing in name of M/s.Mayuresh Motiram Jadhav.

This resulted in initiation of proceedings by the Public Works Department against M/s.Mayuresh Motiram Jadhav and the initiation of process resulted into five works being allotted in favour of the complainant.

6] The complainant has alleged that on account of some political intervention, the action initiated against M/s.Mayuresh Motiram Jadhav was stalled and compromise was effected between the complainant and Accused No.1 to the effect that the complainant was allotted three out of five works, but with a condition that the work allotted in his favour shall be executed through M/s.Mayuresh Motiram Jadhav. The complainant has conceded to the fact that since there was no work in his hand, he agreed to the said settlement and accordingly executed three works. M/s.Mayuresh Motiram Jadhav received the money towards carrying out the said work, but as per the complainant he did not receive a single penny. Therefore, he made inquiries with Appellant No.1 and initially it was revealed to him that as far as work allotted to Appellant No.1 was concerned, 75% of the amount under the work order, was already released in his favour. But when he demanded the money with Appellant No.1, for the three works completed by him, he threatened that unless and until he withdrew the case instituted by the complainant against Appellant No.1, money will not be paid.

As per version of the complainant, he approached political persons for redressal of his grievance, including Nagarsevak, but his grievance cannot be redressed.

On the contrary, he was repeatedly threatened to withdraw the case in absence of which the money payable to him, could not be paid.

7] This in short is the crux of the accusations faced by the Appellant No.1. It is not in dispute that some NC proceedings were lodged against both the Appellants and they were pending.

In the wake of narration of the complainant, to ascertain whether prima-facie case is made out to attract the offence under Sections 3(1)(za)(E) and 3(1)(zc) of the Act of 1989, bare reading of the complaint lodged by the complainant has miserably failed to make out the ingredients of the said Sections. Merely because, some work was carried out and some amount which was due and payable was not made over to the complainant, in no manner can be said to have obstructed the complainant in carrying out his occupation or business, nor it can be said to have imposed social or economic boycott upon him, as being member of Scheduled Caste or Scheduled Tribe.

It cannot be disputed that grant of anticipatory bail under Section 438 Cr.P.C. is barred in respect of the offences under the Act of 1989. However, pursuant to the insertion of Section 18A of the Act of 1989, the position of law which has been enunciated by the Apex Court in the case of **Prathviraj Chauhan vs. Union of India** (*supra*), categorically state that where prima-facie case is not made out, anticipatory bail can be granted in appropriate circumstances with a cautious exercise of power. However, where a prima-facie case is not made out, power under Section 18 and 18A is not permitted to be exercised and for evaluating the prima-facie case, re-appreciation of evidence is not required, but the FIR/complaint must be read as it is.

Though the Court is not expected to indulge in critical analysis of evidence on record, by having a feel of the matter based on the

material, inference has to be drawn. The position of law having been settled to the effect that while exercising power of pre-arrest bail, despite an embargo imposed under Section 18 of the Act of 1989, the High Court has to balance the two interests, i.e. power is not so used as to convert the justice into that under Section 438 of the Cr.P.C., but that is used sparingly and such orders are made in exceptional cases where no prima-facie case is made out as shown in the FIR and further also that if such orders are not made in those classes of cases, result would inevitably to a miscarriage of justice or abuse of process of law.

8] When the facts of the case are perused in the wake of above ratio propounded by the Hon'ble Apex Court, I deem this case to be a fit one whether the power deserve to be exercised as without application of mind, the prosecuting agency merely on the say of the complainant has invoked Section 3(1)(za)(E) and 3(1)(zc) of the Act of 1989. Reading of the complaint in no case attract sections 3(1)(za)(E) and 3(1)(zc) of the Act of 1989. It is pertinent to note that the complainant approached the Additional Sessions Judge with his complaint and he referred to these sections and alleged that the offence has been committed vide said sections and the Additional Sessions Judge while passing an order on 03.12.2022, recorded that the complainant has alleged very serious and non-cognizable offence against the non-applicant, which must be recorded by the concerned Police Station.

9] Pursuant to the directions issued by the learned Judge under Section 156(3) of the Cr.P.C. the police authorities registered the offence by invoking aforesaid sections. However, when the complaint is carefully read, prima-face no case is made out for attracting the

offence under Sections 3(1)(za)(E) and 3(1)(zc) of the Act of 1989 as neither the complainant is restrained from carrying out his profession/ occupation as contemplated under Section 3(1)(za)(E) of the Act of 1989, nor the act of the accused/appellant amount to imposing or threatening social or economic boycott upon him as a member of Scheduled Caste.

In the aforesaid circumstances, the order dated 13.01.2023 with the prima-facie finding in nature is confirmed.

Criminal Appeal No.36/2023 is disposed off.

[BHARATI DANGRE, J]