

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.100 OF 2022

Dipali w/o Santosh Yewale,
Age about 33 Years, Occ. Housewife,
R/o. Shelodi, Tq. Khamgaon,
District Buldhana

..... APPELLANT

// VERSUS //

1. State of Maharashtra Through,
Police Station Officer,
Police Station, Khamgaon Rural,
Tq. Khamgaon, District – Buldhana.

2. Kavita Premsagar Kamble,
Age about 35 Years, Occ. Housewife,
R/o Wadi, Sainagar, Near Railway Gate,
Tq. Khamgaon and District Buldhana.

..... RESPONDENTS

Shri. O. Y. Kashid, Advocate for appellant.
Shri. M. J. Khan, APP for the respondent No.1/State.
Shri S. M. Awachar, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 26/06/2023

JUDGMENT :

1. Heard.

2. **ADMIT.** Heard finally by consent of the learned Counsel
appearing for the parties.

3. The present appeal is preferred by the appellant under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as “SC/ST Prevention of Atrocities Act”) and challenge the order passed by the Special Court in A.B.A. No.23/2022 by which the application for anticipatory bail of the present applicant is rejected.

4. The appellant is apprehending arrest at the hands of police as crime is registered against the present appellant on an allegation that the present appellant is wife of one Santosh Yewale. The husband of the informant is not alive and she is having two children from her marriage. She alleged that present appellant uttered the words and by saying her that she is not the legally wedded wife and she is the mistress. On the basis of the said report, police have registered the offence against the present appellant.

5. As per the contention of the present appellant, from the recitals of the FIR as *prima facie* the offence under the provisions of the SC/ST Prevention of Atrocities Act is not made out. The FIR nowhere discloses that present appellant has uttered the words within the public view with intent to insult the informant. It is further contention of the present appellant that in fact, the offence is not made

out under the provisions of 3(1)(r), 3(1)(s) and 3(2)(va) under the SC/ST Prevention of Atrocities Act and therefore, bar under Section 18 of the SC/ST Prevention of Atrocities Act is not attracted.

6. The said application is strongly opposed by the State that on the ground that the *prima facie* material on record sufficiently shows that present appellant has uttered the words with intent to insult and humiliate the informant and thereby the offence is made out under the provisions of the SC/ST Prevention of Atrocities Act and prayed for rejection of application, in view of bar under Section 18 of the SC/ST Prevention of Atrocities Act.

7. The respondent No.2 has also opposed the application on the ground that there is a bar under Section 18 of the SC/ST Prevention of Atrocities Act.

8. Heard learned Counsel for the appellant. He submitted that in fact, there are no allegations which would attract the provisions of the SC/ST Prevention of Atrocities Act, however Special Court has not considered the same and erroneously rejected the application. The physical custody of the present appellant is not required as nothing is to be recovered from her. Hence, she be released on anticipatory bail.

9. The learned APP Mr. Khan for the State vehemently submitted that considering the allegations against the present appellant in the FIR which is sufficiently shows that the appellant is humiliated, insulted the informant with intention and therefore, the offence is made out against the present appellant. He further submitted that there is bar under Section 18 of the SC/ST Prevention of Atrocities Act and therefore, appeal deserves to be dismissed.

10. The learned Counsel for the respondent No.2 reiterated the said contention and placed reliance on ***Vilas Pandurang Pawar Vs. State of Maharashtra*** reported in ***(2012) 8 SCC 795***.

11. After hearing both the sides and on perusal of the FIR, it reveals that the only allegation against the present appellant is that she uttered the words that she is not the legally wedded wife and she is the mistress. She was ill-treated by the present appellant by uttering the said words. From the entire FIR, nowhere it reveals that present appellant has uttered the said words within the public view. Thus, there is no allegation that the informant was insulted or humiliated in the public view. As far as the bar is concerned, the Hon'ble Apex Court held that the scope of Section 18 of the SC/ST Prevention of Atrocities Act read with Section 438 of the Code is such that it creates a specific bar in

the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Prevention of Atrocities Act, no Court shall entertain application for anticipatory bail, unless it *prima facie* finds that such an offence is not made out. It is further held that Section 18 of the SC/ST Prevention of Atrocities Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the Court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Prevention of Atrocities Act has been *prima facie* made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail.

12. In view of the above observations, if the fact of the present case are considered, admittedly there is no allegation in the FIR that informant is insulted or intimidated with intent to humiliate by calling her with caste name. In fact, there is no reference of her caste in the entire FIR. There is no allegation or specific averment in the complaint that the statement made by the present appellant is within the public view. Thus, the *prima facie* material sufficiently shows that no *prima facie* case is made out against the present appellant to make out the offence. In spite of the specific bar under Section 18 of the SC/ST

Prevention of Atrocities Act, here in the present case, considering the allegation no *prima facie* case is made out and therefore, present appeal deserves to be allowed. Accordingly, I proceed to pass following order.

- (i) The appeal is allowed.
- (ii) The order passed by the learned Additional Sessions Judge, Khamgaon rejecting the application for anticipatory bail is quashed and set aside.
- (iii) The appellant Dipali w/o Santosh Yewale is hereby released on bail in the event of her arrest on executing PR bond in the sum of Rs.25,000/- with one solvent surety of like amount, in respect of Crime No.5/2022 registered with Police Station, Khamgaon Rural, District Buldhana for the offence punishable under Sections 323, 504, 506, 498-A read with Section 34 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.
- (iv) The appellant shall attend the Police Station as and when required for the investigation purpose.
- (v) The appellant shall not induce, threat or promise any of the witnesses who are connected with the alleged crime.

(URMILA JOSHI-PHALKE, J.)

Sarkate.