



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

CRIMINAL APPEAL NO. 262 OF 2023

APPELLANT: Murari s/o Baburao Samrutwar,
Aged about 56 years,
Occupation- Private Job,
R/o Kesarinandan Nagar, Ward No.1,
Urjanagar, Durgapur, Chandrapur,
Tah. and District - Chandrapur.

...V E R S U S...

RESPONDENTS 1] State of Maharashtra,
through Police Station Officer,
Police Station, Durgapur, Tah. and District
Chandrapur.

2] Sau. Sangita Gunwant Meshram,
Aged about 51 years, Occupation –
Labour, R/o Panchasheel Ward No.6,
Urjanagar, Chandrapur, Tah. and District
Chandrapur.

Mr. I.S. Charlewar, counsel for the appellant.
Mr. Hulke, APP for the respondent No.1.
Mr. A.M. Gedam, counsel for the respondent No.2.

CORAM : **URMILA JOSHI-PHALKE, J.**
DATE : **28/11/2023**

ORAL JUDGMENT :

1. Heard finally with the consent of the learned
counsel appearing for the parties.

2. **Admit.**

3. By this appeal, the appellant is seeking pre-arrest bail in connection with crime No. 72/2023 registered with Police Station, Durgapur, District Chandrapur for the offences punishable under Sections 294 and 506 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'the Act of 1989').

4. The appellant is apprehending arrest at the hands of the Police, therefore he approached the learned trial Court for grant of anticipatory bail which is rejected by the Special Judge under the Prevention of Atrocities Act. Being aggrieved with the same, the present appeal is preferred by the appellant.

5. It is submitted by the learned counsel for the appellant, that the crime is registered on the basis of the report lodged by Sau Sangita Gunwant Meshram who alleged that she along with one Sau Namita Udaybhan Chawhan, Mrs. Tarkan Shankar Ganvir were working as labour with

Vijay Enterprises at C.T.P.S., Chandrapur. The present appellant is the Supervisor in Unit No.5. On 05/02/2023, they worked at about 9.30 a.m. on the site, and thereafter for further work, they approached Unit-5 beside the workshop, to inquire with the present appellant at which site they had to work, the present appellant humiliated them by referring their caste and insulted them. On the basis of the said report, police have registered the crime against the present appellant.

6. Learned counsel for the appellant further submitted that even assuming the allegations as it is, no offence is made out against the present appellant, as there is no intentional abuse on the caste by the present appellant. Mere referring to the informant and other ladies by their caste is not sufficient to attract the provisions of the Act of 1989. The custodial interrogation of the present appellant is not required. As the basic ingredient is not attracted and therefore, there is no bar under Section 18 or 18-A of the Act of 1989. Considering the same, the appellant be released on

anticipatory bail.

7. Per contra, learned APP submitted that the informant and other ladies are referred by the present appellant by their caste. He communicated with them in filthy language which shows the intention of the present appellant to humiliate and insult the informant. Thus, prima-facie case is made out against the present appellant and prays for rejection of the appeal.

8. Learned counsel for the original informant reiterated the said contentions and submitted that the uttering of the words and referring informant and other ladies by their caste is sufficient to show that with an intention to humiliate and insult them, the appellant has communicated with them. Thus, the provisions of the Act 1989 are applicable and there is a bar under Section 18 of the Act of 1989, and the present appeal deserves to be rejected.

9. Having heard learned counsel for the appellant, learned APP for the State and learned counsel for the

informant, perused the investigation papers.

10. From recitals of the FIR, it reveals that there was a communication between the present appellant and the informant and other two ladies, the appellant has referred the words --- तुम्ही महार बाया कामावर फक्त झोपायला येता, जा तुम्हाला मी कामावर घेत नाही. तुम्हाला जे बनते ते करून घ्या. तुम्ही कोणत्याही कामाच्या नाही Thus it reveals that the present appellant referred the informant and other ladies by their caste. If the entire recitals of the FIR are taken into consideration, admittedly there are no abuses by the present appellant by referring to their caste.

11. Now, the issue regarding when the bar under Section 18 or 18-A is attracted is well settled, if a person is even alleged of accusation of committing an offence under the Act of 1989 the intention of Section 18 is clearly to debar him from seeking the remedy of anticipatory bail and it is only in the circumstances where there is absolutely no material to infer as to why Section 3 has been applied to implicate a person for an offence under the Act of 1989 the

Courts would be justified in a very limited sphere to examine whether the application can be rejected on the ground of its maintainability. What is intended to be emphasized is that while dealing with an application for anticipatory bail, the courts would be justified in merely examining as to whether there is at all an accusation against a person for registering a case under Section 3 of the Act of 1989.

12. This aspect is dealt with by the full bench of Rajasthan High Court (Jaipur Bench) in the case of ***Virendra Singh vs State of Rajasthan reported in 2000 Cri.L.J.2899*** wherein the court held that the question, therefore which has been referred for consideration by this Full Bench is whether this Court while dealing with an application for anticipatory bail can scrutinize and examine the material to see if a prima facie case is made out constituting an offence under the Act of 1989 or whether it would be justified in rejecting the application merely because the case has been registered under the said Act or it is registered along with some other Sections of the IPC. While answering this issue, the Full

Bench has observed that it has to be borne-in-mind that if a person is even alleged of accusation of committing an offence under the S.C. S.T. Act of 1989, the intention of Section 18 is clearly to debar him from seeking the remedy of anticipatory bail and it is only in the circumstances where there is absolutely no material to infer as to why Section 3 has been applied to implicate a person for an offence under the Act of 1989, the courts would be justified in a very limited sphere to examine whether the application can be registered on the ground of its maintainability. Whether the allegations are true or false or whether there is any preponderance of probability of commission of such an offence, such an exercise in our view is intended to put to a complete bar against entertainment of application of anticipatory bail which is unambiguously laid down under Section 18 of the Act of 1989, which is apparent from the perusal of the section itself and thus the court at the most would be required to evaluate the FIR itself with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of the ingredients constituting the

alleged offence.

13. It is held that the court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint by calling for the case diary, charge-sheet or any other material gathered at the time of investigation but if the allegations in the FIR or the complaint even if they are taken at their face value are accepted in their entirety do not constitute the offence alleged, it is only in those miniscule number of cases, the courts would be justified in entertaining the application, not because it is maintainable but clearly because the Act would be inapplicable in the facts and circumstances of that particular case.

14. This view is referred by this Court also in the case of *Ratnakala Martandrao Mohite Vs The State of Maharashtra and another reported in 2020 ALL MR (Cri) 334, Navnath Dalsingh Rathod Vs State of Maharashtra reported in Law Finder Doc ID # 1486431, Jagdish Sajjankumar Banka V/s State of Maharashtra and another*

reported in 2023 SCC OnLine Bom 581 and Hitesh Verma Vs State of Uttarakhand and another reported in 2021 Cri.L.J 1.

15. In light of the above observations, if the facts of the present case are considered there is only an allegation that the appellant has referred the informant and other ladies by their caste. It is well settled that merely calling a person by his caste name may amount to insult or abuse to him, but it cannot be said to be with intent to humiliate such persons. There must be "intentional insults" or "intimidation" with "intent" to humiliate members of Scheduled Caste and Scheduled Tribes in any place within "public view". The basic ingredients of section 3(1)(r)(s) are that there must be "intentional insults" or "intimidation" with "intent" to humiliate a member of Scheduled Castes and Scheduled Tribes in any place within "public view". It is abundantly clear in the present case, that the ingredients of Section 3(1)(r)(s) are not satisfied and therefore, the bar under Section 18 or 18(a) would not attract. In view of that, criminal appeal deserves to be allowed. Accordingly, I proceed to pass

following order:

- a] The criminal appeal is allowed.
- b] The appellant is released on bail in the event of his arrest in Crime No. 72/2023 registered with Police Station, Durgapur, District Chandrapur for the offences punishable under Sections 294 and 506 of the Indian Penal Code and Section 3(1)(r), 3(1)(s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 be released on bail on furnishing of P.R. Bond of Rs. 25,000/- with one solvent surety in the like amount.
- c] The appellant shall attend the concerned Police Station as and when required for investigation purpose.
- d] The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case.

Criminal appeal is **disposed of** accordingly.

[URMILA JOSHI-PHALKE, J]