

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

CRIMINAL APPEAL NO.418 OF 2023

1. Akshay Sunil Barabde
Aged 26 years, Occ: Agriculturist,

2. Roshan Dnyaneshwar Barabde
Aged 40 years, Occ: Agriculturist

3. Manoj alias Mahesh Dinkarrao Barabde
Aged 45 years Occ: Agriculturist,
All R/o Kumbhargaoon, Tq. Anjangaon
Surji, District Amravati.

...APPELLANTS

---VERSUS---

1. State of Maharashtra,
Through PSO, PS, Rahimpur, Tq.
Anjagaon Surji, District Amravati

2. Omprakash Najukrao Dhande
Aged 26 years, Occ: Labourer, R/o
Kumbargaon, Tq. Anjagaon Surji, Dist.
Amravati

...RESPONDENTS

Shri P.V. Navlani, Advocate for appellants.
Shri S.M. Ghodeswar, APP for respondent no.1/State.
Shri A.M. Chaudhari, Advocate appointed for respondent no.2.

CORAM : URMILA JOSHI-PHALKE, J .
DATED : JULY 19, 2023.

ORAL JUDGMENT :

. The present appeal is preferred by the appellant against the order dated 16.06.2023 passed by the learned Additional Sessions Judge-2, Achalpur by which he has rejected the application for grant of anticipatory bail in Criminal Bail Nos.289/2023 and 290/2023.

2. The present appellants are apprehending arrest at the hands of the police as crime is registered against the present appellants on the basis of report lodged by Naresh Dinkarrao Barabde on an allegation that the informant alongwith his friend went to the Chandrabhaga Mata Temple at about 8 pm to observe the auction procedure of agriculture field of various trusts. During the said auction proceedings, there was altercation of words between Ashok Barabde and Nilesh Bonde, and at that time, five persons were driven out. It is further alleged that out of five persons Pavan Barabde and Mayur Barabde abused them on the basis of caste and asked them to leave the hall of the temple. It is further alleged that all the appellants abused them on their caste. On the basis of said report, the police have registered the alleged crime against the present applicants vide Crime No.104/2023 registered with Police Station, Rahimapur, District Amravati for the offences punishable under Sections 143, 294, 323, 506, 109 of

the Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (For short, "Prevention of Atrocities Act").

3. As per contention of the appellants, there is no allegation against them that they have abused the informant on his caste. The allegations is against the other co-accused. As far as present appellants are concerned, general allegation is that they have pushed them and assaulted them by fist and kick blows. Therefore, the offence under the provisions of Sections 3(1)(r), 3(i)(s), 3(2)(va) of the Prevention of Atrocities Act is not attracted. As far as the custodial interrogation is concerned, their physical custody is not required as nothing is to be recovered from them and prays for protection by way of anticipatory bail.

4. The said appeal is strongly opposed by the State on the ground that the present appellants in furtherance of their common intention abused the informant on his caste and therefore provisions of Prevention of Atrocities Act are attracted. There is a bar under section 18 of the Prevention of Atrocities Act. Therefore, appeal deserves to be rejected.

5. Learned appointed counsel for the respondent no.2 also submitted that there is specific allegation against the present appellants and therefore bar under Section 18 is attracted and appeal deserves to be rejected.

6. Heard learned counsel Shri V.B. Bhise for the appellants. He reiterated the contentions and submitted that as far as the allegation on the caste is concerned, is made against Pavan Barabde and Mayur Barabde. There is general allegation against the present appellants that they pushed the informant and his friend and assaulted them by fist and kick blows. After excluding the provisions of Prevention of Atrocities Act all other offences are bailable one and physical custody of the appellants are not required. As there is no allegation against the present appellants that they abused the informant on his caste the bar under Section 18 or 18A is not attracted. Therefore, appeal deserves to be allowed.

7. Learned APP Shri S.M. Ghodeswar for State and learned counsel Shri A.M. Chaudhari for respondent no.2 reiterated the contention and submitted that there is a bar under Section 18 of

the Prevention of Atrocities Act and therefore appeal deserves to be rejected.

8. Having heard both sides and on perusal of the recitals of the FIR, admittedly, allegation is that the informant and his friend was abused on their caste is against Pavan Barabde and Mayur Barabde. As far as the allegation against the present appellants are concerned, they have assaulted the informant and his friend and pushed them out of the hall. There is no allegation that these appellants have abused the informant and his friend on their caste. During investigation, the statements of various witnesses are recorded, which are on the similar line. During process of auction, two police witnesses were also present there. They have also not narrated the role of the present appellants mentioning that they have abused the appellants on their caste. Thus, the allegation regarding abuses on caste are not levelled against the present appellants.

9. As far as bar under Section 18 is concerned, it is now well settled that while considering the anticipatory bail application and bar under section 18 it has to be borne in mind that if a person is even alleged of accusation of committing an

offence under the Prevention of Atrocities Act 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 Prevention of Atrocities Act the Courts would be justified in a very limited sphere to examine whether the application can be rejected on the ground of its maintainability. The learned Full Bench of the Rajasthan High Court has considered this issue and held that from the FIR itself the ingredients of offences as laid down under Section 3 of the Prevention of Atrocities Act itself is found to be missing, the bar created by Section 18 would not be allowed to operate against an accused and only in that event his application for anticipatory bail would be dealt with by the concerned Court to determine whether the Prevention of Atrocities Act can be said to be rightly applicable against the accused. Any other interpretation would go against the letter and spirit of the clear provisions of Section 18 of the Prevention of Atrocities Act.

10. The similar ratio is laid down by this Court in ***Ratnakala Martandrao Mohite Vs. State of Maharashtra*** reported in **2020 ALL MR 334**, wherein this Court has the referred the various

judgments of the Hon'ble Apex Court as well as this Court and held that in the light of aforesaid judicial authority, it is evident that application under Section 438 of the Cr.P.C. for the relief of pre-arrest bail can be entertained only on the ground of inapplicability of provisions of the Prevention of Atrocities Act and it would be verifiable only after perusal of recital of the FIR or complaint itself and not beyond that. It is the rule of law that once it is gathered from the FIR that the appellants are the accused of committing offence as prescribed under Section 3(1)(r)(s) or (w) (ii) of the Prevention of Atrocities Act, the bar under Section 18A of the Prevention of Atrocities Act would instantly come into operation against them. In contrast, if the contents of FIR do not constitute ingredients of offence under Prevention of Atrocities Act, there would not be any embargo of statutory bar engrafted under Section 18 or 18A of the Prevention of Atrocities Act. It is not permissible for the Court to enter into roving enquiry in regard to sustainability of accusation nurtured on behalf of complainant.

11. Thus, in view of the settled position of law, if the facts of the present case are considered, admittedly, there is no allegation in the FIR against the present appellant therefore bar under

section 18 or 18A is not attracted against the present appellants. As far as the other offences are concerned, which are bailable one. Considering the allegation against the present appellant, their custodial interrogation is not required and they can be protected granting anticipatory bail. In view of that, the appeal deserves to be allowed. Accordingly, I proceed to pass the following order:

ORDER

- i. The criminal appeal is allowed.
- ii. In the event of arrest in Crime No.104/2023 registered with Police Station, Rahimapur, District Amravati for the offences punishable under Sections 143, 294, 323, 506, 109 of the Indian Penal Code and under Sections 3(1)(r), 3(i)(s), 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, appellants (1) Akshay Sunil Barabde, (2)Roshan Dnyaneshwar Barabde, and (3)Manoj alias Mahesh Dinkarrao Barabde, be released on bail furnishing P.R. Bond in the sum of ₹25,000/- each with one solvent surety in the like amount.
- iii. The appellants shall attend Police Station, Rahimapur, District Amravati as and when called by the

investigating officer for investigation purpose and shall cooperate in the investigation.

- iv. The appellants shall furnish their cell phone number and address with address proof.
- v. The appellants shall not tamper prosecution evidence or shall not induce, threaten or pressurize any witness, who are connected with the crime.
- vi. The professional fees of the learned counsel appointed for the respondent no.2 shall be quantified and paid, as per Rules.

JUDGE

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