



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

CRIMINAL APPEAL NO.575 OF 2023

1. Sunanda Manohar Jawanjal
Age 56 years, Occupation – Household,
2. Manohar Ganpatrao Jawanjal
Age 69 years, Occupation – Nil,

Both R/o. Hanuman Nagar,
Morshi, Tq. Morshi,
District Amravati

...APPELLANTS

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Police Station Morshi,
Tq. Morshi, District Amravati
2. Kalpana Vinodrao Nagale
Age 42 years, Occupation – Household,
R/o Hanuman Nagar, Morshi,
Tq. Morshi, District Amravati

...RESPONDENTS

Shri S.B. Gandhe, Advocate for the appellants.
Ms Sneha Dhote, APP for the State.
Mr. A.N. Darunde, Advocate (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : DECEMBER 05, 2023.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel for
the parties.

2. Present appeal is preferred against the order passed by the Special Judge and Additional Sessions Judge-2, Amravati in Criminal Bail Application No.1072/2023 by which the anticipatory bail application of the appellants in Crime No.337/2023, is rejected.

3. The appellants are apprehending arrest at the hands of police as Crime No.337/2023 is registered against them for the offences punishable under Sections 323, 452, 504 and 506 read with Section 34 of the Indian Penal Code and under Section 3(1)(r), 3(1)(s) and 3(2) (va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities Act' for short) at police Station Morshi, District Amravati.

4. As per the submission of the learned Counsel for the appellants that crime is registered against the present appellants on the basis of report lodged by Kalpana Vinod Nagale on an allegation that the present appellants are her neighbours and there was quarrel between them on 23/07/2023 on a trivial reasons. It is further alleged that on 24/07/2023 at about 10.00 p.m. when she was present at the house along with her family members, present applicant came near to his house and enter in her house and abused her. It is further alleged that they also abused her on her caste and assaulted her. On the basis of said report, police have registered the crime against the present appellants.

5. Learned Counsel for the appellants vehemently submitted that as far as the contentions in the First Information Report is concerned, no case is made out under the provisions of the Atrocities Act, and therefore, the bar under Section 18 or 18A is not attracted. He further submitted that mere referring the informant by her caste is not sufficient to attract the provisions. The custodial interrogation is not required and hence she be released on bail in the event of her arrest.

6. On the other hand, learned Additional Public Prosecutor submitted that there is a *prima facie* material against the present appellant and recitals of the FIR shows that the informant was not only abused but also assaulted and abuses were on the caste. She was insulted and humiliated within the public view, therefore, the provisions of Atrocities Act are attracted and there is a bar under Section 18 and 18A of the Atrocities Act. In view of that the application deserves to be rejected.

7. Learned Counsel for respondent No.2 reiterated and endorsed the same contentions and submitted that *prima facie* material which is in the nature of the statement which shows that the appellants who has humiliated and insulted the informant on her caste, and therefore, bar under Section 18 and 18A of the Atrocities Act is attracted.

8. Learned Counsel for the appellants placed reliance on ***Pavan and ors. Vs. State of Maharashtra and ors. MANU/MH/3178/2023*** and submitted that in view of the observation of the said judgment this Court had considered the bail application for anticipatory bail as *prima facie* case is not made out and mere referring the informant by her caste is not sufficient to attract the provisions.

9. It is well settled that merely because the informant and witnesses are referred by their caste is not sufficient to attract the provisions of the Atrocities Act. The Full Bench of the Rajasthan High Court in the case of ***Virendra Singh Vs. State of Rajasthan [2000 Cri.Law Journal 2899]*** dealt with this issues and observed that even if a person is even alleged of accusation of committing an offence under the 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 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 and once the

ingredients of the offence are available in the FIR or the complaint, the courts would not be justified in entering into a further inquiry by summoning the case diary or any other material as to whether the allegations are true or false or whether there is any preponderance of probability of commission of such an offence. Such an exercise 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. The Full Bench has further considered the aspect and 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 inter 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. It is held that from the FIR itself the ingredients of offence as laid down under Section 3 of the 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. This aspect is also considered by this Court in various judgments including *Ratnakala Martandrao Mohite Vs. The State of Maharashtra and anr.* 2020 ALL MR (Cri) 334, *Navnath s/o Dalsing Rathod @ Aade and ors. Vs. State of Maharashtra thr. Police Inspector Karmad Police Station, Aurangabad and anr.* in Criminal Appeal No.968 of 2018 decided on 25.04.2019, *Jagdish Sajjankumar Banka Vs. State of Maharashtra and anr.* 2023 SCC OnLine Bom 581 and *Hitesh Verma Vs. State of Uttarakhand and anr.* (2020) 10 SCC 710 wherein the Apex Court has considered the judgment of Full Bench of the Rajasthan High Court. The Hon'ble Apex Court has held that as per the FIR the allegation of abusing the informant were within the four walls of her building. It is not the case of the informant that there was any member at the time of the incident in the house. Therefore, the basic ingredient that the words were uttered in any place within the public view is not made out, therefore, the judgment of this Court in *Swaran Singh Vs. State* it cannot be said to be a place within the public view as none was said to be present within the four walls of the building as per the FIR.

10. The Apex Court further observed that in many anticipatory bail matters, we have noticed one common argument being canvassed

that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while dealing with an anticipatory bail application.

11. Returning to the present appeal is concerned, the allegations in the FIR is only to the extent that the informant was referred by her caste. As far as the allegations against applicant No.2 is concerned only his presence is stated by the informant. No overt act is attributed to him. Even considering the allegations as it is against applicant No.1 it is only to the extent that she has referred the informant by her caste. Admittedly, alleged incident has occurred in the premises of the house of the informant. The recitals of the FIR nowhere shows that after hearing the abuses any persons from the community gathered there. Therefore, whether the alleged incident has taken place within the public view or not is also a material question which is to be considered. It is well settled that merely because the informant and witnesses are referred by their caste is not sufficient to attract the provisions of the Atrocities Act.

12. As far as the bar under Section 18 or 18A of the Atrocities Act is concerned in the case of *Dr. Subhash Kashinath Mahajan Vs. The State of Maharashtra and anr. [(2018) 6 SCC 454]* wherein the Hon'ble Apex Court has considered the question whether there is an absolute bar to the grant of anticipatory bail. The Hon'ble Apex Court has referred the several decisions including the decision in the case of *Vilas Pandurang Pawar and anr. Vs. State of Maharashtra and ors. [2012 ALL MR (Cri.) 3743 (S.C.)]* and *Shakuntla Devi vs. Baljinder Singh [2013(2) R.C.R. (Criminal) 882]* and observed that there can be no dispute with the proposition that mere unilateral allegations by any individual belonging to any caste, when such allegation is clearly motivated and false, cannot be treated as enough to deprive a person of his liberty. It is held that thus, exclusion of provision for anticipatory bail cannot possibly, by any reasonable interpretation, be treated as applicable when no case is made out or allegations are against the applicant. If this interpretation is not taken into consideration in the present case also there is no allegation that the present appellants has abused the informant on her caste. Mere referring the caste is not sufficient to attract the provision. There must an intention and intimidation to humiliate the member of Scheduled Caste and Scheduled Tribe in a place within the public view. It must be shown prima facie that the accused who is the member of higher caste intentionally insulted and humiliated the member of the Scheduled

Caste and Scheduled Tribes. The absence of this ingredients will entitle the present appellants to be released on anticipatory bail.

13. In view of that the appeal deserves to be allowed. Hence, I proceed to pass the following order :

(i) The appeal is allowed.

(ii) In the event of arrest, the appellants 1) Sunanda Manohar Jawanjale and 2) Manohar Ganpatrao Jawanjale in connection with Crime No.337/2023 is registered against them for the offences punishable under Sections 323, 452, 504 and 506 read with Section 34 of the Indian Penal Code and under Section 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 at police Station Morshi, District Amravati, be released on anticipatory bail on executing P.R. Bond in the sum of Rs.25,000/- (Rs. Twenty five thousand) each with one surety each in the like amount.

(iii) The appellants shall attend concerned Police Station as and when required for the investigation purpose.

(iv) The appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted

with the facts of the case and shall not tamper the prosecution evidence.

(v) The appellants shall furnish their Cell phone number and address along with the address proof before the Investigating Officer.

14. The appeal is disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*