



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

CRIMINAL APPEAL NO.627 OF 2023

Sayog Sanjay Oganiya
Aged 20 years,
Occupation – Labour Work,
R/o Sant Kavaram Dharmshala

...APPELLANT

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Police Station, Wardha
2. Victim, through Natural guardian in
Crime No.159/2023 in P.SO., P.S.,
Wardha

...RESPONDENTS

Mr. A.S. Shukla, Advocate for the appellant.
Mr. A.G. Mate, APP for the State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : DECEMBER 21, 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, Wardha in Criminal Bail

Application No.327/2023 by which the anticipatory bail application of the appellant in Crime No.159/2023, is rejected.

3. Learned Counsel for the appellant submitted that as far as the bar under Section 18 or 18A is concerned is not attracted as the present appellant was not aware that the victim belongs to the Scheduled Caste. The recitals of the First Information Report nowhere shows that there is any averment that the appellant is knowing that the victim belongs to the Scheduled caste and the Scheduled tribe. He further submitted that as far as the allegation to attract the Section 354 of the Indian Penal Code is concerned and the incriminating material shown to be the mobile phone of the present appellant which is already handed over to the police for the investigation purpose and is forwarded for the analysis. Regarding the rest of the allegation, the custodial interrogation of the present appellant is not required. Learned trial Court had not considered the said aspect and erroneously rejected the application. The impugned order passed by the learned Special Court deserves to be set aside. In support of his contention he placed reliance on ***Jairam and anr. Vs. State of Maharashtra, through Police Inspector and anr. [2019 SCC OnLine Bom 603]*** and submitted that the facts of the cited case are squarely applicable to the present case and prays for releasing the appellant on anticipatory bail.

4. *Per contra*, learned Additional Public Prosecutor strongly opposed the appeal on the ground that considering the victim belongs to the Scheduled caste, the bar under Section 18 or 18A is attracted. The alleged offence is committed by the present appellant with an intention to humiliate and insult the victim. As the ingredients of the Section 3(1) and 3(2) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities Act' for short) are established by the investigating agency, the application for anticipatory bail is not maintainable and liable to be dismissed.

5. After giving thoughtful considerations to the submissions made by the learned Counsel and on perusal of the investigation papers, the recitals of the FIR shows that the allegation against the present appellant is that the victim is resident of village Borgaon (Meghe), District Wardha and studying in 9th standard. The applicant/accused resides on the backside of her house and having love affair with her since last one month. She used to go outside along with accused No.2 i.e. the present appellant. On 27/01/2023, at about 11.00 a.m. when she was along with her brother and the applicant and they went to Urban Town Layout, at that time, friend of the applicant i.e. accused No.1 – Roshan Surkar was present there. The accused No.1 – Roshan Surkar prepared video on mobile phone of the victim showing that she and the present appellant kissing each other while sitting on a swing. Thereafter

accused No.1 told the victim that she does not know how to do the said act and uttered the filthy language. On the next day, it revealed to her that the video made viral on the social media as well as on the Instagram story by the present applicant, therefore, she approached to the police station and lodged the FIR. Considering the allegations, the incriminating article i.e. the mobile phone which is already seized by the Investigating agency.

6. As far as the bar under Section 18 or 18A of the Atrocities Act is concerned, it is now well settled that 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 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.

7. Learned Counsel placed reliance on the decision of this Court in Jairam and anr. (supra) wherein this Court has considered the various judgments and bar under Section 18 of the act. Now, it is well settled that in regard to Section 3(2)(v); it is necessary to show that they committed offence under IPC, punishable with imprisonment for term of ten years or more against person belonging from Scheduled Castes or Scheduled Tribes category or his property. It is further held that if there is no reference in the FIR that the appellants-accused were aware or they had a knowledge about the caste of first informant which are the main and basic ingredients of offence under Section 3(1) and 3(2) of the Act of 1989 for its consideration at this initial stage pertains to pre-arrest bail of the appellants-accused under section 438 of Cr.P.C. It is further held that bare lodging the FIR of the incident of assault on first

informant and his mother do not itself attract the provisions of the Act of 1989 and the appellant was released on bail.

8. Learned Counsel for the appellant submitted that similar is the case in the present case. Considering the submissions made by the learned Counsel for the appellant 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 to be taken into consideration. The Full Bench of Rajasthan High Court has considered this issue and 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. Any other interpretation would go against the letter and spirit of the clear provision of Section 18 of the Act of 1989. The similar view is expressed by this Court in ***Ratnakala Martandrao Mohite Vs. The State of Maharashtra and anr. [2020 ALL MR (Cri) 334]*** wherein it is held that scope and ambit of applicability of Sections 18 as well as 18A of the Act of 1989 create bar for exercising jurisdiction under Section 438 of the Cr.P.C. However, it would not preclude the concerned Court from examination of allegations made in the FIR and its face value to determine whether *prima facie* case is made out or not? In ***Vilas Pandurang Pawar and another Vs. State of***

Maharashtra [2012 Cri.L.J. 4520] wherein the Hon'ble Apex Court reiterated the similar principle of law and observed that no Court shall entertain the application for anticipatory bail in the offence registered under the provisions of the Act of 1989, unless it *prima facie* find that such offence is made out. Similar principles/rule also delineated by this Courts of Law in the aforesaid case laws referred on behalf of appellants. In such circumstances, it is evident that, in spite of bar under Section 18 of the Act of 1989 for invocation of powers under Section 438 of the Cr.P.C., it is still open to this Court to find out by looking into FIR as to whether *prima facie* case is made out by the complainant against appellants. Thus, the application under Section 438 of Cr.P.C. needs to be considered for ascertaining, whether there is material to make out *prima facie* case for offence punishable under the Act of 1989.

9. In the light of the above principles, if the facts of the present case are taken into consideration, admittedly, there is no whisper or averment in the FIR that the present appellant was aware that the victim belongs to the Scheduled Castes or Scheduled Tribes. In view of that bar under Section 18 or 18A is not attracted and the appeal is maintainable.

10. Considering the material, only allegation against the present appellant is that he made the said video viral. The incriminating article i.e. mobile phone is already seized and forwarded to the forensic

analysis. The analysis report would be received in a due time. Only for the interrogation purpose, physical custody of the present appellant is not required, however, considering the allegations levelled against the present appellant, the appeal deserves to be allowed by imposing certain conditions. Hence, I proceed to pass the following order :

- (i) The appeal is allowed.
- (ii) In the event of arrest, the appellant - Sayog Sanjay Oganiya in connection with Crime No.159/2023 registered at police station Wardha for the offences punishable under Sections 354A, 501 of the Indian Penal Code, Section 8 and 11 of the Protection of Children from Sexual Offences Act, 2012, Section 67 and 67(A) of the Information Technology Act, 2000 and Section 3(1)(w)(i)(ii), 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, be released on anticipatory bail on executing P.R. Bond in the sum of Rs.25,000/- (Rs. Twenty five thousand) with one surety in the like amount.
- (iii) The appellant shall attend concerned Police Station as and when required for the investigation purpose.
- (iv) The appellant 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 appellant shall furnish his Cell phone number and address along with the address proof before the Investigating Officer.

11. The appeal is disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*