



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

CRIMINAL APPEAL NO.670 OF 2023

Sarang Manohar Shende,
Aged about – 26 years,
Occ- Business,
R/o Kapsi, Tq- Hinganghat,
Dist- Wardha. **APPELLANT**

...VERSUS...

1. State of Maharashtra, Through
Police Station Officer,
Allipur, Tq- Hinganghat,
Dist- Wardha.
2. Amol Jainrao Wasekar,
Aged about- 39 years,
Occu- Labourer,
R/o Kapsi, Tq.- Hinganghat,
Dist- Wardha. **RESPONDENTS**

CRIMINAL APPEAL NO.671 OF 2023

Shrawan @ Sawan Manohar Shende,
Aged about – 21 years,
Occ- Student,
R/o Kapsi, Tq- Hinganghat,
Dist- Wardha. **APPELLANT**

...VERSUS...

1. State of Maharashtra, Through
Police Station Officer,
Allipur, Tq- Hinganghat,
Dist- Wardha.
2. Amol Jainrao Wasekar,
Aged about- 39 years,

Occu- Labourer,
R/o Kapsi, Tq.- Hinganghat,
Dist- Wardha.

..... **RESPONDENTS**

Mr. Imran Deshmukh, Advocate for Appellant.
Mr. N. R. Rode, APP with Ms. S. S. Dhote, APP for
Respondent No.1/State.
Mr. A. Z. Mirza, Advocate for Respondent No.2.

CORAM: **URMILA JOSHI PHALKE, J.**
DATE: **1st DECEMBER, 2023.**

ORAL JUDGMENT:

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

2. **Admit.**

3. By these appeals the appellants in both the appeals
have challenged the order passed by the Special Judge in Criminal
Bail Application No.135/2023 and Criminal Bail Application
No.136/2023 by which anticipatory bail application of the present
appellants in connection with Crime No.411/2023 registered at
Allipur Police Station, Tahsil Hinganghat, District Wardha under
section 294, 506 read with section 34 of the Indian Penal Code
and under section 3(1)(r)(s) of the Scheduled Caste and
Scheduled Tribe (Prevention of Atrocities) Act, 1989 are

registered.

4. The appellants are apprehending arrest at the hands of police as First Information Report is lodged against them on the basis of report lodged by Amol Jainrao Wasekar on an allegation that he is the resident of village Kapsi Tahsil Hinganghat, District Wardha belongs to the 'Mahar' caste. The present appellants Sarang Manohar Shende and Shrawan Manohar Shende, are the sons of Manohar Shende who is the trustee of Laxminarayan Deosthan Trust. On 28.08.2023 at about 03:00 p.m. when his wife alone was at the home both the appellants came in-front of the house and abused her in a filthy language. It is further alleged that they also referred his wife by her caste and abused them on their caste. On the basis of said report police registered the crime against the present appellants.

5. The present appellants have preferred application for bail in the event of the arrest before the Special Court which was not considered and rejected. Being aggrieved with the same present appellants have preferred application on the ground that the learned trial court has not considered that the allegations *prima facie* shows that no offence is attracted against the present appellants there is no bar under Section 18 or 18-A of the S.C. and

S.T. Act to entertain the anticipatory bail application merely referring any person by the caste is not sufficient to attract the provisions of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act. The physical custody of the present appellants is not required. The learned counsel for the appellants reiterated the said contention and submitted that *prima facie* no case is made out against the present appellants even assuming that the appellants have referred the wife of the informant by her caste is not sufficient to attract the provisions of the special act. The physical custody of the appellants are not required as far as the interrogation is concerned. The appellants are ready to abide by all the conditions.

6. The learned APP has strongly opposed the application on the ground that there is a specific bar under section 18 and 18-A to entertain the application and the appeal. The recitals of the FIR shows that both the appellants have abused the wife of the informant by referring her caste and abused her on her caste. Considering the same the appeal deserves to be dismissed. The learned counsel for the respondent No.2 advanced the same contention and submitted that the order passed by the trial court sufficiently shows that *prima facie* case is made out against the

present appellants. There is a bar under section 18 and 18-A to entertain the application. The reasoned order is passed by the trial court. There is no merit in the appeal and appeal deserves to be dismissed.

7. Having heard the learned counsel for the appellants, the learned APP for the State and the learned counsel for the informant, perused the investigation papers. From the recitals of the FIR it reveals that the informant has received some message on his whatsapp showing that the father of the present appellants are involved in a corruption being a trustee of Laxminarayan Deosthan. Therefore, dispute arose between the parties. As per the allegation the appellant Sarang Shende has abused the wife of the informant by referring her caste As far as the appellant Shrawan Shende is concerned there is no allegation that either he referred the caste of the informant or his wife or abused them. During investigation the Investigating Officer has recorded the statements of the witnesses. The statement of the wife of the informant is also recorded and thereafter provisions of Special Act are made applicable. As far as the custodial interrogation of the present appellants is concerned, there is no allegation that they have not used any weapon.

8. While considering the bar under section 18 and considering the maintainability of the application it is necessary to refer the settled law in view of the judgment of the Rajasthan High Court. The full bench of Rajasthan High Court in the case of ***Virendra Singh v. State of Rajasthan 2000 CRI. L. J. 2899*** wherein it is held 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 a 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. 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 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. The full bench of Rajasthan High Court further considered 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 the offence as laid down under section 3 of the Act itself is to be ascertain 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 Act of 1989 can be said to be rightly applicable against the accused any other interpretation, would go against the letter and spirit of the clear provision of section 18 of the Act of 1989 which has already stood the test of reasonableness and constitutional validity upto the level of the Apex Court.

9. The observation of the Rajasthan High Court are considered by this Court also in the case of (i) ***Ratnakala Martandrao Mohite v. The State of Maharashtra & Anr. 2020 ALL MR (Cri) 334***, (ii) ***Navnath s/o. Dalsing Rathod @ Aade and others v. State of Maharashtra Through Police Inspector Karmad Police Station, Aurangabad and another Law Finder Doc Id # 1486431***, (iii) ***Jagdish Sajjankumar Banka v. State of Maharashtra and another 2023 SCC OnLine Bom 581***. Thus, it is clear from the observation of the full bench of the Rajasthan High Court from which it reveals that if the court forms an opinion that there is such material then bar under section 18 comes into play if the material is not sufficient to make out *prima facie* case of commission of the offence punishable under the act against the acquittal the court is expected to consider the application as provided under section 438 of the Criminal Procedure Code.

10. After giving additional consideration to the rival submissions advanced on behalf of both the sides, I find it necessary to discuss the recitals of the FIR, the recitals of the FIR have only to the extent that the appellant Shrawan has referred the wife of the informant by her caste. It is well settled that merely calling a person by his caste name though may amount to insult or abuse to him, it cannot be said to be with intent to humiliate such person.

11. In the instant case the first informant in his first information report refers that the appellant Shrawan has abused his wife by her caste and insulted and humiliated her. The informant has not stated in the FIR the mode and the manner, in which, the appellants not intentionally insulted or intimidated with intent to humiliate them being a member of Scheduled Castes. The allegations about the abuses are also general in nature no specific words are mentioned in the FIR. It is specifically observed by the full bench of the Rajasthan High Court which subsequently considered by this court also that while considering the allegations the allegation in the FIR are to be taken into consideration and not the subsequent statements. The observations of the Rajasthan High Court shows that the application for grant of

anticipatory bail can be entertained only on the ground of inapplicability of provisions of the Act of 1989 due to the facts of the case which will have to be gathered only from the FIR and not beyond that because once it is gathered from the FIR that the applicant is an accused of committing an offence laid down under section 3 of the Act of 1989, the bar of section 18 would instantly operate against the person who has been made an accused of the offence under the Act of 1989. To put it differently, once it is apparent from the FIR that an offence under the Act of 1989 is even alleged, the courts would not be justified at all in weighing or scrutinizing the preponderance of the probability of commission of the offence by the accused, but if 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 the application for anticipatory bail would be dealt with by the concerned court.

12. In regard to the offences registered under the IPC against the appellants are concerned no specific words are mentioned in the FIR in what manner abuses were hurled. Taking into consideration overall factual circumstances, I am of the

opinion that despite of the bar under section 18 and 18-A of the Act of 1989 for invocation of the powers under section 438 of the Cr.P.C., it is still open to this court to find out by looking to the FIR of the case itself as to whether the *prima facie* case is made out against the present appellants. The recitals of the FIR are only to the extent that the wife of the informant was referred by the caste. The sweeping and ominous allegation are made in the FIR appears to be based on whole perception of the first informant complainant and it would not match with the very ingredients of section 3(1)(r) (s). In view of that the appeals deserves to be allowed. Accordingly, I proceed to pass following order:

- [i] The impugned orders rejecting the bail application dated 03.10.2023 are quashed and set aside. The applications of the appellants filed under section 438 of Cr.P.C. for pre-arrest bail are allowed. The appellants are released on anticipatory bail in the event of their arrest in connection with Crime No.411/2023 registered under section 294, 506 read with section 34 of the Indian Penal Code, on executing of the P.R. bond in the sum of Rs.20,000/- each with one

solvent surety in the like amount.

- [ii] The appellants shall produce iron rod which alleged to be in the hands of the appellants at the time of the incident. The appellants are directed to produce the same before the Investigating Officer the said production will be considered as a recovery under Section 27 of the Indian Evidence Act by treating the said period as their custody.
- [iii] The appellants have remain present as and when required for the investigation purpose and shall co-operate with the investigating agency.
- [iv] The appellants shall furnish their mobile number and address along with his address proof.

13. Both these appeals are disposed of.

JUDGE