



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.13 OF 2024

TANVIR SADANAND HINDURAO ..APPELLANT
VS.
THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

Adv. R.D. Suryawanshi for the Appellant.
Adv. Nitesh J. Mohite for Respondent No.2.
Ms. Sangeeta D. Shinde, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : MARCH 07, 2024

P.C. :

- 1.** Heard learned counsel for the appellant, learned counsel for Respondent No.2 and learned APP for the State.
- 2.** By this appeal, the appellant challenges the order dated 22/12/2023 passed by the learned Special Judge, Kalyan, rejecting the pre-arrest bail of the appellant.
- 3.** The complainant filed a First Information Report (FIR) bearing C.R. No. 314 of 2023 for the offence punishable under Section 3(1)(r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("Atrocities Act" for short) with Badlapur (East) Police

Station, Thane.

4. This Court while granting interim protection to the appellant observed as under:

"2. The appellant at the relevant time was working as an Assistant Engineer with the Maharashtra State Electricity Distribution Company Ltd. (MSEDCL). The appellant was the authority competent to forward the proposal in respect of installation of electric meters, cables, etc. The first informant is the son of a contractor who was into a business of electricity fittings, laying cables and the like. There are two instances mentioned in the First Information Report (FIR), one of which is of December, 2022. Apparently in respect of this incident where it is alleged that the appellant abused the informant in the name of his caste, there are no witnesses. So far as the next incident of 27/11/2023 is concerned, it is alleged that the said incident where the appellant allegedly abused the informant in the name of the caste happened in front of the informant's friend. It is alleged that on 8/12/2023, the appellant had tendered a written apology to the first informant. The FIR was registered on 9/12/2023 in respect of an incident of December 2022 and 27/11/2023. Learned counsel submitted that there is a delay in lodging the FIR.

3. I have perused the order passed by the trial Court. In the order of the trial Court it is recorded that the custodial interrogation of the appellant is not necessary. However, in view of the bar of Section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, I must be satisfied about the appellant's involvement in the present offence."

5. Learned APP as well as learned counsel for respondent No.2 opposed the appeal. It is submitted that there are two instances when the abuse was made in the name of caste of

the complainant. It is submitted that the second instance was in the presence of the complainant's friend and there was no reason why the complainant's friend would state wrong facts. It is then submitted that an apology was tendered by the appellant which is at page No. 133 of the paperbook which would clearly go to show that the appellant had abused the complainant in the name of caste. Learned counsel for respondent No.2 relied upon the decision of the Supreme Court in **Vilas Pandurang Pawar and Anr. Vs. State of Maharashtra and Ors.**¹. My attention is invited to paragraph Nos. 9 and 10 of the said decision. Paragraph Nos. 9 and 10 read thus:

"9. Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been prima facie made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail.

10. The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no court shall entertain an

¹(2012) 8 Supreme Court Cases 795

application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. The court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence.”

6. While relying upon the aforesaid decision, learned counsel submitted that in view of the specific statutory bar provided under Section 18 of the Atrocities Act and in light of the specific averments made in the FIR by the complainant, Section 18 of the Atrocities Act is applicable to the case at hand and in view of the same the appellant is not entitled for anticipatory bail under Section 438 of the Code of Criminal Procedure.

7. A perusal of the FIR would reveal that there are two instances of caste-based abuse. The first instance of abuse was hurled in the cabin of the appellant and not in public view. So far as the second instance is concerned, it is alleged that the abuse was in the presence of the complainant’s friend. The abuses were not made in a public view or in the

presence of independent witnesses as the witness who was present at the time of the second instance is the complainant's friend. It is not clear from the apology letter whether the apology was in respect of the abuse the appellant hurled in the name of caste. These are the matters which will be decided at the time of trial. I may not be understood to have observed anything on merits. In the facts and circumstances of the present case, I am of the opinion that the bar under Section 18 of the Atrocities Act will not be attracted in the present case.

8. The appeal is allowed. The interim order dated 09/01/2024 stands confirmed.

9. In the event of arrest of the appellant- Tanvir Sadanand Hindurao in connection with C.R. No.314 of 2023 registered with Badlapur (East) Police Station, the appellant shall be released on bail on his furnishing P.R. Bond of Rs.15,000/- with one or more sureties in the like amount.

10. The appellant shall cooperate with the investigation.

11. The appellant shall not contact, threaten or intimidate the complainant. The appellant shall not tamper with the

evidence.

12. The trial Court shall not be influenced by the observations made hereinabove which are limited to deciding this appeal for anticipatory bail.

13. The appeal is disposed of in the above terms.

(M. S. KARNIK, J.)