



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

CRIMINAL APPEAL NO.8 OF 2024

1. Ishwar @ Digamber Devidas Bawaskar,
Age 26 years,
Occupation – Labour,
2. Mirabai Devidas Bawaskar,
Age 48 years, Occupation - Household,
All R/o. Indira Nagar, Shegaon,
Tq. Shegaon, District Buldhana

...APPELLANTS

VERSUS

1. The State of Maharashtra,
through Police Station Officer,
Shegaon Police Station Shegaon,
Taluka Shegaon and District Buldhana
2. Rajkanya Amardip Rewaskar,
Age 37 years, Occu. Nil,
R/o. Indira Nagar, Shegaon,
Taluka Shegaon and District Buldhana

...RESPONDENTS

Mr. A.S. Mohan, Advocate for the appellants.
Ms H.S. Dhande, APP for the State.
Ms A. Mishrikotkar, Advocate (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : MARCH 15, 2024.

ORAL JUDGMENT :

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

2. This is an appeal under Section 14A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities Act' for short), the appellant has challenged the order dated 12/11/2023 whereby the Special Judge and Additional Sessions Judge, Khamgaon, District Buldhana rejected the anticipatory bail application of the appellants bearing Criminal Anticipatory Bail Application No.400/2023.

3. The appellants are arraigned as an accused in connection with Crime No.580 of 2023 registered at police station Shegaon, District Buldhana for the offence punishable under Sections 323, 324, 504, 506, read with Section 34 of the Indian Penal Code. After registration of the crime, the appellants approached to the Special Court for grant of bail however, Special Court has rejected the application by observing that there is a bar under Section 18 of the Atrocities Act. Being aggrieved with the same, present appellants preferred this appeal for grant of anticipatory bail.

4. The accusation against the present appellants is on the basis of report lodged by the victim on an allegation that the informant is resident of Shegaon, Tahsil Shegaon and belongs to the Cobbler community. On 12/11/2023, when she was in front of her house cracking the crackers, at that time present appellants abused her and

assaulted her. On the basis of said report, police have registered the crime against the present appellants.

5. It is submitted by the learned Counsel for the appellants that taking into consideration the entire recitals of the FIR there is no dispute to show that either the appellants have referred the caste of the informant, abused her on her caste. *Prima facie* the allegation shows that the offence is attracted under Section 323, 324, 504 and 506 read with Section 34 of the Indian Penal Code and not under the provisions of the Atrocities Act. Now, it is well settled that after perusal of the FIR, if the ingredients of the offence punishable under the provisions of the Act of 1989 is not attracted, the bar under Section 18 of the Atrocities Act is also not attracted.

6. Learned Additional Public Prosecutor and learned Counsel for respondent No.2 strongly opposed the appeal and prayer for grant of anticipatory bail on the ground that the informant was subjected for abuses by the present appellants and the other co-accused. Their custodial interrogation is required and prays for rejection of the appeal and also submitted that no interference is called for.

7. I have heard learned Counsel for both the parties. Perused the recitals of the FIR. From the recitals of the FIR, there is no reference

that the appellants was knowing that she belongs to the Scheduled Caste, there is no reference of the caste also and there is no dispute regarding the abuses on the caste. Thus, *prima facie* case is not made out against the present appellants, so far as the provisions of the Atrocities Act are concerned. Now, it is well settled that though there is a bar under Section 18 of the Atrocities Act but the *prima facie* case is not made out, the application for anticipatory bail is maintainable. Learned trial Court has not considered the same and erroneously rejected the application. In view of that, the appeal deserves to be allowed. In view of that, I proceed to pass the following order :

- (i) The appeal is allowed.
- (ii) The order passed by the Special Judge and Additional Sessions Judge, Khamgaon in Criminal Anticipatory Bail Application No.400/2023 dated 12/11/2023 is hereby quashed and set aside.
- (iii) In the event of arrest, the appellants – 1) Ishwar @ Digamber Devidas Bawaskar and 2) Mirabai Devidas Bawaskar in connection with Crime No.580 of 2023 registered at police station Shegaon, District Buldhana for the offence punishable under Sections 323, 324, 504, 506, read with Section 34 of the Indian Penal Code, 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.

(iv) The appellants shall attend the concerned police station as and when required for the investigation purpose and shall cooperate with the investigating agency.

(v) The appellants shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

8. The appeal is disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*