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

CRIMINAL APPEAL NO.39 OF 2024

- 1) Rishabh s/o Dilip Deshmukh,
Aged about 32 Years,
Occupation : Business,
 - 2) Dushyant s/o Dilip Deshmukh,
Aged about 28 Years,
Occupation: Business,
R/o Ashiyaad Colony, Shegaon Road,
Amravati, Taluka and District Amravati
- APPELLANTS**

// VERSUS //

- 1) State of Maharashtra,
Through Police Station Officer,
Police Station, Gadge Nagar,
Taluka and District Amravati.
 - 2) Ku. Tejaswani Gowardhan Markam,
Aged about 28 Years,
Occupation : Private Job,
R/o. Mahatma Phule Nagar, Navsari,
Amravati, Taluka and District Amravati.
- RESPONDENTS**

Mr. P. R. Agrawal, Advocate for appellants.
Mr. S. S. Hulke, APP for respondent No.1/State.
Mr. Anand P. Thakare, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 07.02.2024

ORAL JUDGMENT :

1. Heard.

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2. **Admit.**

3. By preferring this appeal, the appellants have challenged the order dated 09.01.2024 passed by the Special Judge and the Additional Sessions Judge – 2, Amravati in Criminal Bail Application No.1520/2023, whereby the application of the appellants for grant of anticipatory bail is rejected.

4. The appellants are apprehending arrest at the hands of police, as crime is registered against them vide Crime No.1404/2023 registered with Police Station, Gadge Nagar, Amravati, District Amravati for the offences punishable under Sections 294, 354-A, 354-D, 448 and 506 of the Indian Penal Code and under Section 3(2)(va), 3(1)(r), 3(1)(s), 3(1)(w)(ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to 'the Act of 1989').

5. The crime is registered against the present appellants on the basis of report lodged by the victim on an allegation that on 23.11.2023 at about 3.30 p.m., when she was present in the shop, at that time present appellants entered into the shop and the appellant No.1 Rishabh has physically touched her waist and the applicant No.2 Dushyant has hold her hand and removed her out of the shop and abused her on her caste. It is further alleged that the appellant No.1 said to her that she belongs to the lower caste. On the basis of said report, police have

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registered the crime against the present appellants and, therefore, appellants approached to the trial Court for grant of anticipatory bail. Learned trial Court observed that there is a bar under Section 18-A of the Act of 1989 and rejected the application.

6. Being aggrieved with the same, the present appeal is preferred by the appellants on the ground that the learned trial Court has ignored the settled law that when there is no *prima facie* case, the anticipatory bail application is maintainable and no bar attracted under Section 18 or 18-A of the Act of 1989 to entertain the application.

7. Learned Counsel Mr. P. R. Agrawal for the appellants submitted that as far as the alleged incident is concerned, nothing is on record to show that the alleged incident has occurred within the public view. He further submitted that on perusal of the recitals of the FIR, nowhere the caste of the informant was referred by the present appellants, as per the allegations. He submitted that thus, a *prima facie* case is not made out against the present appellants and, therefore, bar under Sections 18 or 18-A is not attracted. He submitted that even if, the allegations are taken as it is, from which it cannot be gathered that with intention to humiliate or insult the victim any words by using her caste or uttered by the present appellants.

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This sufficiently shows that the provisions of the Atrocities Act are not applicable and, therefore, the bar under Section 18-A is not attracted. He further submitted that as far as the allegation under Sections 354-A and 354-D of the Indian Penal Code are concerned, which are bailable offences. In view of that, he prays for grant of anticipatory bail to the present appellants by quashing the order passed by the trial Court.

8. Learned APP for the State vehemently submitted that considering the allegations in the FIR, the ingredients of the Sections 3(1)(r), 3(2)(va) are attracted, as there is specific allegation that present appellants have uttered the words referring to the victim that she belongs to the lower caste, which sufficiently shows the intention of the present appellants to insult and humiliate. In view of that, the appeal deserves to be dismissed. The learned trial Court has rightly considered that *prima facie* case is made out and, therefore, the bar under Section 18-A of the Act of 1989 is attracted.

9. Learned Counsel for the respondent No.2 endorsed the same contentions in addition to that he invited my attention towards Section 8 (b) of the Act of 1989 and submitted that in view of Section 8 (b) the presumption is there which says that when a group of persons committed an offence under this Chapter and if it is proved that the offence committed was a

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sequel to any existing dispute regarding land or any other matter, it shall be presumed that the offence was committed in furtherance of the common intention or in prosecution of the common object.

10. He further placed reliance on the decision of the Hon'ble Apex Court in the case of **Union of India Vs. State of Maharashtra and others**, reported in **(2020) 4 SCC 761**, wherein the Hon'ble Apex Court in para No.54 held that it cannot be presumed that a person of such class would inflict injury upon himself and would lodge a false report only to secure monetary benefits or to take revenge. If presumed so, it would mean adding insult to injury, merely by the fact that person may misuse provisions cannot be a ground to treat class with doubt. It is due to human failings, not due to the caste factor. The monetary benefits are provided in the cases of an acid attack, sexual harassment of SC/ST women, rape, murder, etc.

11. After hearing the learned Counsels for the appellant and respondent No.2 and learned APP for the State, perused the recitals of the FIR. It seems that there was a previous dispute between the parties on account of the land. Regarding the alleged incident it is alleged by the victim that on the day of incident i.e. on 23.11.2023, when she was present in the shop these two appellants entered into the shop and abused her on

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her caste and also uttered the words that she belongs to the lower caste. It is further alleged that the appellant No.1 has touched to her waist and appellant No.2 hold her hand and removed her from the shop. Thus, as per the prosecution, the victim belongs to the 'Scheduled Caste' and in view of the provisions of Section 3(1)(r) of the Act of 1989, the victim belongs to the Scheduled Caste was intentionally insulted with intent to humiliate a member of a Scheduled Caste or Scheduled Tribe within the public view is committed by the present appellants.

12. The learned trial Court has observed that the bar under Section 18-A of the Act of 1989 is attracted and, therefore, rejected the application of the present appellants for grant of anticipatory bail.

13. While considering the bar under Sections 18 or 18-A of the Act of 1989 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 vs. State of Rajasthan** reported in **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

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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 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

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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 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. 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 ascertained, 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.

14. 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.** reported in **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 a *prima facie* case of commission of the offence punishable under the act.

15. In **Prathvi Raj Chauhan Vs. Union of India and others** reported in **(2020) 4 SCC 727** wherein also the Hon'ble Apex Court has dealt with when the bar is attracted and it is held that firstly grant of anticipatory bail under Section 438 Cr.P.C. is barred in respect of offences under the 1989 Act. However, where *prima facie* case not made out anticipatory bail can be granted in appropriate circumstances, with a cautious exercises of power. Sections 18 and 18-A of the 1989 Act have no application where *prima facie* case is not made out. However, for evaluating the *prima facie* case, reappraisal of the evidence is not required.

16. In the instant case, the FIR does not indicate during incident the appellants have uttered the word by abusing the informant on her caste which is the essence of offence under

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Section 3(1)(r) of the Act of 1989. The recitals of the FIR shows the genesis at the origin of the incident that the quarrel took place out of the previous dispute between the parties, wherein the appellant No.1 has uttered the words by mentioning that she belongs to the lower caste. Even it is well settled that merely reference of the caste is also not sufficient to attract the ingredients of the offence. The FIR does not disclose the essential ingredients of the offence under Section 3(1)(r) and Section 3(2)(va) of the Act of 1989. No specific words uttered by the present appellants are mentioned in the FIR. Merely mentioning that she belongs to the lower caste is not sufficient to attract the provisions of the Atrocities Act.

17. Considering the allegation in the present case, it refers that there was a quarrel between the present appellants and the victim as present appellant No.1 allegedly touched the waist of the victim and appellant No.2 pulled her hand. Admittedly, the offences punishable under Section 354-A and 354-D of the Indian Penal Code are the bailable offences. As far as the offences under the Schedule Castes and Scheduled Tribes are concerned, it is to be shown that with an intention to insult or intimidate with intent to humiliate the words are used or the abuses are used. Here, the general statement is made by the victim that she was abused by the present appellants and it is

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only mentioned that the appellant No.1 have uttered that she belongs to lower caste. No specific words regarding her caste are mentioned by the victim. In view of that, there is no *prima facie* case is made out to attract the provisions of Atrocities Act and, therefore, anticipatory bail application is maintainable. Considering the recitals of the FIR and the material which is on record, the bar under Section 18-A of the Act of 1989 is not attracted. The learned trial Court ignored the settled law and observed that bar is attracted, therefore, the order passed by the trial Court deserves to be quashed and set aside by allowing the appeal. Moreover, now, the investigation is already completed and charge-sheet is filed, custodial interrogation of the present appellants is not required. In view of that, I proceed to pass following order.

ORDER

- (i) The appeal is allowed.
- (ii) The order dated 09.01.2024 passed by the learned Special Judge and Additional Sessions Judge – 2, Amravati, rejecting the Criminal Bail Application No.1520/2023, is hereby quashed and set aside.
- (iii) In the event of their arrest, the appellant No.(1) **Rishabh s/o Dilip Deshmukh** and No.(2) **Dushyant s/o Dilip Deshmukh** be released on anticipatory bail, in connection with Crime No.1404/2023 registered with Police Station, Gadge Nagar, Amravati, District Amravati for the offences punishable under Sections 294, 354-A, 354-D, 448 and 506 of the Indian Penal Code and under

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Sections 3(2)(va), 3(1)(r), 3(1)(s) and 3(1)(w)(ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, on executing PR bond in the sum of Rs.25,000/- each with one solvent surety in the like amount.

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

(v) The appellants shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

The appeal is disposed of.

(URMIL A JOSHI-PHALKE, J.)

Sarkate.