



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

CRIMINAL APPEAL NO.46/2024

Shaukat Lalmiya Deshmukh (Patel)

Vs.

The State of Maharashtra thr. P.S.O. Borgaon, Manju, tq. And Dist. Akola and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms Preeti Siriya, Advocate h/f Shri A.S. Sharma, Advocate for appellant
Ms Soniya Thakur, APP for respondent No.1/State
Ms Kirti Deshpande, (Appointed) Advocate for respondent No.2

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 24/07/2024

Heard.

2. **Admit.**

3. By preferring this appeal, the appellant has challenged the order dated 18/01/2024 passed by the Special Court- Additional Sessions Judge and Special Judge, Akola under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, who has rejected the application of the present appellant for grant of anticipatory bail.

4. The appellant is apprehending arrest at the hands of police, as crime is registered on the basis of report lodged by Tarabai Suresh Navkar, alleging that appellant/accused has abused on her caste and assaulted her. It is further alleged that on 08/01/2024, she had been to the agricultural field and was returning back towards at her house, at the

relevant time, present applicant came by holding stick in his hand and abused her on her caste. The said act was committed within the public view to insult and humiliate her. On the basis of said report, police have registered the crime against the present appellant punishable under Section 323, 324, 506 of the Indian Penal Code and Section 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act of 1989'). Thereafter, the appellant approached to the Special Court for grant of bail in the event of the arrest but the learned trial Court has rejected the application considering there is a bar under Section 18 and 18-A of the Act of 1989.

5. Learned Counsel for the appellant submitted that from the recitals of the FIR, *prima facie* no offence is made out under the provisions of Atrocities Act and the alleged incident has not taken place within the public view and, therefore, this Court has granted the ad-interim protection. Now investigation is almost completed. The custodial interrogation of the appellant is not required. The bar under Section 18 is not attracted. In view of that the interim protection deserves to be confirmed.

6. Learned APP and learned appointed Counsel strongly opposed the said application and submitted that from the recitals of the FIR, it reveals that the informant was abused by the appellant on her caste, and in view of Section 18-A, the bar is attracted and

therefore, the application deserved to be rejected.

7. After hearing learned Counsel for the appellant, perused the FIR and on perusal of the recitals of the FIR as well as the investigating papers, it reveals that there is only reference of the caste of the informant. As far as the allegation regarding abuses on the caste are concerned, which are not specifically mentioned in the FIR. During investigation, various statements are recorded, wherein also the recitals of the FIR has to the reference of the caste are reiterated. At this stage, *prima facie* case is not made out against the present appellant. The provision of the Act of 1989, as far as bar under Section 18 and 18-A is concerned, it is well settled by the decision of the Hon'ble Apex Court in **Prathvi Raj Chauhan Vs. Union of India and others** reported in **(2020) 4 SCC 727** wherein it is held that grant of anticipatory bail under Section 438 of the Criminal Procedure Code 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 exercise of power.

8. In the light of the above observation and recitals of the FIR and the various statements of the witnesses, I considered, except the reference of the caste, there is no other allegations regarding the abuses on the caste. Mere reference of the caste is not sufficient to attract the provisions of the Act of 1989.

Considering the same, the appellant has made out the case for grant of anticipatory bail. In view of that, interim protection granted to the present appellant by order dated 25/01/2024 is hereby confirmed by imposing the conditions that the appellant shall attend the Police Station as and when required for investigation purpose and shall co-operate the investigating agency.

9. The appellant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case. The impugned order passed by the Special Judge, Akola in Criminal Anticipatory Bail Application No.15/2024 is hereby quashed and set aside.

10. The appeal is disposed of.

11. The fees of the appointed Counsel be quantified as per Rules.

JUDGE

R.S. Sahare