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

CRIMINAL APPEAL NO.191 OF 2024

Nilesh s/o Jaydeo Wagh,
Aged about 36 Years,
Occupation : Agriculturist,
R/o. Aamkhed, Taluka – Chikhli
District – Buldhana.

..... APPELLANT

// VERSUS //

1. State of Maharashtra,
Through its Police Station Officer,
Police Station, Chikhali,
Taluka Chikhali,
District – Buldhana.

2. Bhimrao s/o Kacharu Gawai,
Aged – 40 Years,
Occupation : Labour,
R/o Aamkhed, Taluka – Chikhali,
District – Buldhana.

.... RESPONDENTS

Mr. S. V. Sirpurkar, Counsel for the appellant.
Ms. H. N. Prabhu, APP for the respondent No.1/State.
Mr. M. P. Kariya, Counsel for the respondent No.2.

WITH

CRIMINAL APPEAL NO.47 OF 2024

Rameshkumar s/o Kisan Malode,
Aged about 45 Years,
Occupation : Teacher,
R/o. Chikhali, Tahsil – Chikhali,
District – Buldhana.

..... APPELLANT

// VERSUS //

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1. State of Maharashtra,
Through its Police Station Officer,
Police Station, Chikhali,
Tahsil - Chikhali,
District – Buldhana.
2. Bhimrao s/o Kacharu Gawai,
Aged – 40 Years,
Occupation : Labour,
R/o Aamkhed, Taluka – Chikhali,
District – Buldhana.

.... RESPONDENTS

Mr. S. V. Sirpurkar, Counsel for the appellant.
Ms. H. N. Prabhu, APP for the respondent No.1/State.
Mr. M. P. Kariya, Counsel for the respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 28.08.2024

ORAL JUDGMENT :

1. Heard.
2. **Admit.**
3. By preferring this appeal, the appellants have challenged the order passed by the Additional Sessions Judge, and the Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in Anticipatory Bail Application Nos. 27/2024 and 423/2023 dated 13.02.2024 and 16.01.2024 respectively.

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4. The appellants are apprehending arrest at the hands of police as the crime is registered on the basis of report lodged by Bhimrao Kacharu Gawai, on an allegation that the co-accused Sunil Jaydeo Wagh and Nilesh Jaydeo Wagh had come to the first informant and the appellant namely Rameshkumar Malode and the another appellant Nilesh instigated the co-accused Sunil to assault the first informant. The co-accused Sunil had inflicted a blow of iron thing on the head of first informant. The appellant Nilesh gave a blow of iron rod on the legs of the informant, due to which he sustained the fracture injuries. On the basis of the said report, police have registered the crime against the present appellants.

5. After registration of the crime, both the appellants approached to the learned Special Court by preferring an Application No.27/2024 and 423/2023 for grant of anticipatory bail. The Special Court rejected both the applications, in view of bar under Section 18 of the said Act.

6. Being aggrieved and dissatisfied with the same, present appeals are preferred by the appellants.

7. Learned Counsel Mr. Shirpurkar for the appellants submitted that there was a previous disputes between the family of the present appellants and the informant. The Civil Suit bearing No.110/2023 is pending which was filed by the wife of the appellant Rameshkumar Kisan Malode wherein the learned trial Court granted the injunction. Being aggrieved with the same, this false report came to be filed. He further submitted that as far as the custodial interrogation is concerned, which is not required as the investigation is practically completed. The weapons are already recovered. The informant, who is injured in the said incident, is already discharged from the hospital and now there is no apprehension of death. He submitted that as far as the applications of the provisions of the Scheduled Castes and the Scheduled (Prevention of Atrocities) Act are concerned, which is not attracted as there is no allegation in the FIR that present appellants have abused the informant on his caste. After thought that allegation is made in the subsequent statement, but from the recitals of the FIR, it nowhere reveals that the present appellants have used any abusive words to insult or humiliate the informant and thereby committed an offence. He submitted that as far as

the appellant Rameshkumar Malode is concerned, except the instigation, there is absolutely no allegation against him to attract the provision of Atrocities. In view of that they both be released on bail in the event of their arrest.

8. Learned APP and learned Counsel for the respondent No.2 strongly opposed the applications on the ground that the informant was assaulted mercilessly and *prima facie* material against the present appellants shows that due to the assault at the hands of Nilesh, the informant has sustained the fracture injury and he was under treatment for seven days. Thus, the vital role is played by the appellant Nilesh in assaulting the informant and therefore, bar under Section 18 is attracted and therefore, the appeals deserves to be dismissed.

9. After hearing the learned Counsel for the appellants and learned APP for the State, perused the recitals of the FIR. As far as appellant namely Rameshkumar Kisan Malode is concerned, only allegation against him is that he has instigated the co-accused and due to the instigation, the co-accused have assaulted the informant. As far as the abuses on the caste are concerned,

admittedly, from the recitals of the FIR it nowhere reveals that the informant has made an allegation that he was abused on his caste on the day of incident. Subsequently, when the supplementary statement of the informant was recorded on 24.12.2023, first time this allegation was made by the informant that he was abused on his caste and therefore, the provisions of the Atrocities Act are applied. It is well settled that when *prima facie* case is not made out, the bar under Section 18 is not attracted.

10. Recently, in the case of **Shajan Skaria Vs. The State of Kerala and another** in **Criminal Appeal No.2622/2024 [Arising out of SLP (Crl.) No.8081 of 2023] decided on 23.08.2024**. The Hon'ble Apex Court has considered that whether Section 18 of the Act imposes an absolute bar on the grant of anticipatory bail in cases registered under the said Act. By referring the statement of objects and reasons accompanying the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Bill, 1989. The Hon'ble Apex Court observed that "It is evident from the aforesaid that the purpose of the Act, 1989 is to prevent the commission of offences of atrocities against the members of the Scheduled Castes and Scheduled Tribes, to

provide for establishment of special courts for the trial of such offences and to make provisions for the relief and rehabilitation of the victims of such offences.”

11. It is further observed that “The Act, 1989 could be said to have been enacted to improve the social and economic conditions of the vulnerable sections of the society as they have been historically subjected to various indignities, humiliations and harassment besides deprivation of life and property on account of their caste identity. The legislation, thus, intends to punish the acts committed against the vulnerable sections of the society for the reason that they belong to a particular community. Section 18 of the Act, 1989 which makes the remedy of anticipatory bail unavailable in cases falling under the Act, 1989 reads thus:

“18. Section 438 of the Code not to apply to persons committing an offence under the Act.—

Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.”

12. By referring the above said provision, it is observed that it is manifest from a plain reading of Section 18 referred to above that it bars the applicability of Section 438 of the CrPC in respect of offences under the Act, 1989. The legislature in its wisdom thought fit that the benefit of anticipatory bail should not be made available to the accused in respect of offences under the Act, 1989, having regard to the prevailing social conditions which give rise to such offences and the apprehension that the perpetrators of such atrocities are likely to threaten and intimidate the victims and prevent or obstruct them in the prosecution of such offences, if they are allowed to avail the benefit of anticipatory bail.

13. By referring the various decisions rendered by the Hon'ble Apex Court it is held that "The provisions inserted by way of carving out Section 18-A of the Act, 1989 referred to above were made the subject matter of challenge in Prathvi Raj Chauhan (supra). In the said case, it was argued that Section 18-A inserted by way of amendment was only with a view to nullify the judgment in **DR Subhash Kashinath Mahajan Vs. State of Maharashtra and Anr.**, reported in **(2018) 6 SCC 454**. This Court has noted

that it was not in dispute that the bar of Section 18-A in the Act, 1989 had been enacted because of the judgment passed by this Court in ***Subhash Kashinath*** (supra) more particularly in view of the directions contained in paragraphs 79.3 and 79.5 therein. The court also noted that the review petitions filed by the Union of India in ***Subhash Kashinath*** (supra) were allowed and the directions contained in paragraphs 79.3 to 79.5 referred to above were ordered to be recalled.

14. In such circumstances, the Hon'ble Apex Court observed that the examination of the Constitutional validity of Section 18-A brought by way of the amendment had been rendered academic. However the decision in ***Prathvi Raj Chauhan Vs. Union of India***, reported in **(2020) 4 SCC 727** makes it abundantly clear that even while upholding the validity of Section 18-A of the Act, 1989, this Court observed that if the complaint does not make out a *prima facie* case for applicability of the provisions of the Act, 1989 then the bar created by Sections 18 and 18-A(i) shall not apply and thus the court would not be precluded from granting pre-arrest bail to the accused persons.

15. The Hon'ble Apex Court further dealt with the issue regarding the applicability of Section 3(1)(r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and observed that the basic ingredients to constitute the offence under Section 3(1)(r) of the Act, 1989 are:

- a. Accused person must not be a member of the Scheduled Caste or Scheduled Tribe;
- b. Accused must intentionally insult or intimidate a member of a Scheduled Caste or Scheduled Tribe;
- c. Accused must do so with the intent to humiliate such a person; and
- d. Accused must do so at any place within public view.

16. The Hon'ble Apex Court further observed that all insults or intimidations to a member of the Scheduled Caste or Scheduled Tribe will not amount to an offence under the Act, 1989 unless such insult or intimidation is on the ground that the victim belongs to Scheduled Caste or Scheduled Tribe.

17. It further observed that mere knowledge of the fact that the victim is a member of the Scheduled Caste or Scheduled Tribe is not sufficient to attract Section 3(1)(r) of the Act, 1989. The offence must have been committed against the person on the ground or for the reason that such person is a member of Scheduled Caste or Scheduled Tribe.

18. In the light of the above observations if the fact of the present case are considered, admittedly, initially, there was no allegation as to the abuses on the caste. It is further apparent from the investigation papers that due to the previous dispute on account of the agricultural land and civil litigations are pending, the alleged incident has taken place. Whether there was an intentional insult or not is a matter of evidence. At this stage, the investigation is completed and charge-sheet is already filed. As far as the bar under Section 18 is concerned, which is not attracted as there was no averment in the FIR as to the abuses on the caste. From the investigation papers it nowhere reveals that the informant was assaulted merely because he belongs to the Scheduled Caste. On the contrary, it reveals that due to the previous dispute between them, the alleged

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incident had taken place. The incriminating weapons are already seized by the investigating agency. As far as the custodial interrogation is concerned, which is not required. In view of that both the appeals deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The Appeal bearing Nos.47/2024 and 191/2024 both are allowed.
- (ii) The orders passed by the Special Court i.e. Additional Sessions Judge, Buldhana in ABA No.27/2024 and 423/2023 are hereby quashed and set aside.
- (iii) The appellants – **Rameshkumar S/o Kisan Malode** and **Nilesh S/o Jaydeo Wagh** shall be released on anticipatory bail in the event of arrest in connection with Crime No.939/2023 registered under Sections 326, 307, 506, 504, 143, 147, 148, 149 read with Section 34 of the Indian Penal Code with Section 3(1)(r), 3(1)(s), 3(2)(v), 3(v)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989 on executing PR Bond 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 if any interrogation is required.
- (v) The appellants shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

(vi) The appellant **Nilesh S/o Jaydeo Wagh** shall attend the concerned Police Station once in a week on Sunday between 10.00 a.m. to 1.00 p.m., till the investigation is completed.

(vii) As far as the role of the concerned appellant is concerned, the appellant **Nilesh S/o Jaydeo Wagh** shall not enter into the village Malipura, Taluka Chikhali, till framing of the charge against them by the Special Court.

Both the appeals are disposed of.

(URMILA JOSHI-PHALKE, J.)