



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

CRIMINAL APPEAL NO.74 OF 2024

Sujaoddin @ Sonu Taheroddin Khatib,
Aged about 38 years,
Occupation – Business,
R/o Kazipura, Umarkhed,
Tq. Umarkhed, District Yavatmal

...APPELLANT

VERSUS

1. State of Maharashtra,
through Police Station Officer,
P.S. Umarkhed, District Yavatmal
2. Namdeo Jairamji Sasane,
Aged about 52 years,
Occupation – Politician,
R/o. Nath Nagar,
Umarkhed, District Yavatmal

...RESPONDENTS

Mr. A.S. Mardikar, Sr. Advocate a/b Mr. P.S. Chawhan, Advocate
for the appellant.
Mr. V.A. Thakare, APP for the State.
Ms C.S. Bhute, Advocate (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : FEBRUARY 14, 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 24/01/2024 whereby the Additional Sessions Judge, Pusad, District Yavatmal rejected the anticipatory bail application of the appellant bearing Criminal Bail Application No.9/2024 mainly on the ground that the bar under Section 18A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 in filing application for the anticipatory bail.

3. Learned Senior Counsel Mr. Mardikar submitted that reason behind the implication of the present appellant is politically motivated. Even the allegations are accepted as no case is made out against the present appellant as mere reference of the caste by the appellant is not sufficient to attract the provisions of the Atrocities Act. He further submitted that from the recitals of the FIR nowhere it reveals that the appellant was knowing that the informant namely Namdeo Jayramji Sasane belongs to the Scheduled Caste and knowingly he has humiliated and insulted him within the public view by abusing him on his caste. Thus, in absence of any recitals in the FIR, the bar under Section 18A is not attracted. He submitted that merely because the appellant belongs to the Congress party he is falsely implicated in the alleged offence. His

physical custody is not required. In view of that, he be protected by granting anticipatory bail.

4. Learned Additional Public Prosecutor strongly opposed the appeal and submitted that the First Information Report *prima facie* indicates that the present informant belongs to the scheduled caste and with intention to insult him, his caste was referred and he was abused by the present appellant within the public view and thereby the ingredients of Section 3(1)(r) of the Atrocities Act are fulfilled, and therefore, the application for grant of anticipatory bail is not maintainable.

5. Learned Counsel for respondent No.2 also reiterated the same contentions and submitted that in view of the bar under Section 18A, the application is not maintainable and learned trial Court has rightly considered this aspect and rightly rejected the application.

6. I have perused the record and considered the submissions advanced by the learned Counsel for the respective parties. It has to be borne in mind that the Prevention of Atrocities Act which is a beneficial legislation has been enacted to protect the marginalised society which has been humiliated, harassed and subjected in dignified manner. The law is also settled regarding the maintainability of the anticipatory bail application. The issue was dealt by the Full Bench of the Rajasthan High Court in ***Virendra Singh Vs. State of Rajasthan*** [2000 Cri.Law Journal

2899] wherein the Rajasthan High Court held that it has to be borne in mind 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 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. 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 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.

7. The above judgment of the Full Bench of the Rajasthan High Court is also referred by this Court in various judgments i.e. ***Ratnakala Martandrao Mohite Vs. The State of Maharashtra and anr. 2020 ALL MR (Cri) 334, Navnath s/o Dalsing Rathod @ Aade and ors. Vs. State of Maharashtra thr. Police Inspector Karmad Police Station, Aurangabad and anr. in Criminal Appeal No.968 of 2018 decided on 25.04.2019 and Jagdish Sajjankumar Banka Vs. State of Maharashtra and anr. 2023 SCC OnLine Bom 581*** wherein also it is held that the issue of applicability of Section 18 of the Act elaborately and held that the provisions of Section 18 as well as newly amended Section 18 of the Act of 1989 create a bar for exercising jurisdiction under Section 438 of the Cr.P.C. However, it would not preclude the concerned Court from examination of allegations made in the FIR on its face value to determine whether *prima facie* case is made out or not. In ***Vilas Pandurang Pawar and anr. Vs. State of Maharashtra and ors. [2012 ALL MR (Cri.) 3743 (S.C.)]*** wherein the Hon'ble Apex Court held that no Court shall entertain application for anticipatory bail in the offence registered under the provisions of the Act of 1989, unless it *prima facie* finds that such an offence is made out. In ***Prathvi Raj Chauhan vs Union of India [(2020) 4 SCC 727]*** wherein also the Hon'ble Apex Court held that grant of anticipatory bail under Section

438 of 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 conscious exercise of power. Section 18 and 18A of the 1989 Act have no application where *prima facie* case is not made out. However, for evaluating the *prima facie* case re-appreciation of evidence is not required.

8. I have given the thoughtful considerations to the rival submissions of the parties and also perused the various decisions in which the issue regarding the bar under Section 18 or 18A is elaborately discussed. In view of the same, it is manifestly clear that while considering the application for anticipatory bail the parameters which needs to be considered is whether the *prima facie* case is made out for applicability of the provisions under Section 18 or 18A of the Atrocities Act.

9. In the instant case, the complainant namely Namdeo Jayramji Sasane who claims to be a member of “Mang” community. He had alleged that on the day of incident i.e. on 30/12/2023, the appellant has referred him by saying “तु तो मांग जैसे निची जातीका आमदार है जरा ५ मिनीट पुलिस हटा के देख फिर देखेंगे कोणता गाना बजता है”. Thus, from the allegation of the FIR it reveals that the appellant has referred him by his caste. It is well settled that mere reference of the caste is not sufficient to attract the provisions of the Atrocities Act. merely calling a person by his caste name though may amount to insult or abuse to him, it cannot be

said to be with intent to humiliate such person.

10. The allegation against the present appellant is that he called the informant by his caste. He has stated in his FIR the mode and manner in which the appellant had insulted and humiliated him being a member of the Scheduled Caste. The various statements recorded during the investigation also refers the same. As already observed earlier mere reference of the caste by the appellant is not sufficient to attract the provisions of the Atrocities Act. Taking into consideration overall factual matter, as observed earlier that calling a person on his caste is not sufficient to attract the provisions for grant of anticipatory bail is maintainable and the bar under Section 18A is not attracted.

11. In view of above, the appeal deserves to be allowed by setting aside the order passed by the Special Judge. In view of that, I proceed to pass the following order :

- (i) The appeal is allowed.
- (ii) The order passed by the Additional Sessions Judge, Pusad, District Yavatmal dated 24/01/2024 in Criminal Bail Application No.9/2024 rejecting the anticipatory bail application of the appellant is hereby quashed and set aside.
- (iii) In the event of arrest, the appellant - Sujaoddin @ Sonu Taheroddin Khatib in connection with Crime No.839 of

2023 registered at police station Umarkhed, District Yavatmal for the offence punishable under Sections 153, 336, 506 read with Section 34 of the Indian Penal Code and Section 3(1)(r) and 3(1)(s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, be released on anticipatory bail on executing P.R. Bond in the sum of Rs.25,000/- (Rs. Twenty five thousand) with one surety in the like amount.

(iv) The appellant shall attend the concerned police station as and when required, for the investigation purpose.

(v) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper the prosecution evidence.

(vi) The appellant shall furnish his Cell phone number and address along with the address proof before the Investigating Officer.

12. The appeal is disposed of accordingly.

13. The fees of the appointed Counsel be quantified as per rules.

(URMILA JOSHI-PHALKE, J.)