



(1)

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

CRIMINAL APPEAL NO.109 OF 2024

1. Shivshankar s/o Vitthal Kavhar,
Aged about 27 Years, Occupation: Labour,
2. Shivaji s/o Vitthal Kavhar,
Aged about 22 Years, Occupation: Labour,
3. Sandip s/o Ramrao Nirmale,
Aged About 23 Years, Occupation: Labour,
All R/o. Dhanora (Bk.),
Taluka and District Washim.

.... APPELLANTS

// VERSUS //

1. The State of Maharashtra,
Through Police Station Officer,
Police Station Washim (Rural),
District Washim.
2. Gopal s/o Pundlik Sutar,
Aged about 38 Years,
Occupation: Contractor,
R/o. Dhanora (Bk.),
Tahsil and District Washim.

.... RESPONDENTS

WITH

CRIMINAL APPEAL NO.93 OF 2024

Shankar s/o Vijay Kakde @
Gaurishankar Vijyanand Kakde,
Aged about 25 Years, Occupation: Labour,
R/o. Dhanora, Post – Nagthana,
Taluka and District Washim.

.... APPELLANT

// VERSUS //

1. The State of Maharashtra,
Through its Police Station Officer,
Washim (Rural),
Taluka and District Washim.

(2)

2. Gopal s/o Pundlik Sutar,
Aged about 38 Years,
Occupation: Contractor,
R/o. Dhanora (Bu.),
Tahsil and District Washim.

.... RESPONDENTS

WITH

CRIMINAL APPEAL NO.96 OF 2024

1. Dnyaneshwar Ramdas Tupe,
Aged about 27 Years, Occupation: Labour,
2. Gajanan s/o Ramdas Tupe,
Aged about 23 Years, Occupation: Labour,
3. Eknath s/o Dagdu Ingole,
Aged about 22 Years, Occupation: Labour,
4. Krushna s/o Keshav Nirmale,
Aged about 27 Years, Occupation: Labour,
5. Abhishek Shyamrao Nirmale,
Aged about 21 Years, Occupation: Labour,
All R/o. Dhanora (Bk.),
Tahsil and District Washim.

.... APPELLANTS

// VERSUS //

1. The State of Maharashtra,
Through its Police Station Officer,
Police Station Washim (Rural),
District Washim.
2. Gopal s/o Pundlik Sutar,
Aged about 38 Years,
Occupation: Contractor,
R/o. Dhanora (Bk.),
Tahsil and District Washim.

.... RESPONDENTS

Mr. R. N. Ghuge, Advocate for appellants in Appeal
Nos.109/204 and 96/2024.
Mr. G. N. Shinde, Advocate for appellant in Appeal
No.93/2024.
Mr. N. B. Jawade, APP for respondent No.1/State in all
Appeals.
Mr. Mir Nagman Ali, Advocate for respondent No.2 in all
Appeals.

(3)

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 13.06.2024

ORAL JUDGMENT :

1. Heard.

2. **Admit.**

3. Challenging the order passed in the Criminal Bail Application No.10/2024 by the Additional Sessions Judge, Washim, under the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, by which the application of present appellants for grant of anticipatory bail is rejected.

4. The appellants are prosecuted for the offences punishable under Sections 143, 341, 323, 427, 504 of the Indian Penal Code, 1860 and under Section 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to 'the Act of 1989'), on an allegation that the informant is working as a Contractor and in Criminal Appeal No.109/2024 the appellant No.2-Shivaji Vitthal Kavhar is also resident of the same village. On 15/01/2024 at about 9.40 a.m., the informant was proceeding along with his son and other labours on his vehicle, at the relevant time, one Madhav Fand came in front of his vehicle, at that time, appellant No.2 – Shivaji Kavhar who was standing in front of the shop of Madhav

(4)

Fand and there was hot exchange of words between them and said appellant No.2 abused him on his caste. It is further alleged that appellant Nos.1 and 3 in Criminal Appeal No.109/2024 namely Shivshankar and Sandip Nirmale as well as the appellant in Criminal Appeal No.93/2024 Shankar Vijay Kakde and the appellants in Criminal Appeal No.96/2024 Dnyaneshwar Ramdas Tupe, Gajanan Ramdas Tupe, Eknath Dagdu Ingole, Krushna Keshav Nirmale and Abhishek Shyamrao Nirmale also came their and abused him and broken the glass of his vehicle. On the basis of said report, the police have registered the crime.

5. After registration of the crime, the appellants approached to the learned Special Court for grant of anticipatory bail, however, the Special Court has rejected the application by observing that there is a bar under Section 18, 18-A of the Act of 1989 and rejected the application.

6. Being aggrieved and dissatisfied with the same, the appellants approached this Court on the ground that the observation of the learned trial Court is erroneous, as there is no allegation against the present appellants, alleging that they have abused the informant on his caste. Thus, no *prima facie* case is made out against the present appellants. The said allegation is only against the appellant No.2 – Shivaji Kavhar and not against the present appellants. The other offences alleged against the present

appellants are bailable one. The bar under Section 18 or 18-A of the Act of 1989 is not attracted, as no *prima facie* case is made out.

7. Learned APP strongly opposed the appeal on the ground that the appellants in furtherance of their common intention, came at the spot and abused the informant on his caste. The involvement of the present appellants reveals and therefore, there is a bar under Sections 18 or 18-A and learned trial Court has rightly rejected the anticipatory bail application.

8. Having heard the learned Counsel for the appellants and learned APP for the State, perused the recitals of the FIR. As far as the appellant No.2 in Criminal Appeal No.109/2024 is concerned, there is a specific allegation against him that he has abused the informant on his caste. Therefore, the prayer of the appellant No.2 for grant of anticipatory bail deserves to be rejected as bar is attracted. As far as the other appellants are concerned, only allegation against them is that they have abused him and caused the damage to his vehicle by breaking the glass of the said vehicle.

9. It is well settled that though bar is attracted under Section 18-A, but where *prima facie* case is not made out, anticipatory bail can be granted in appropriate circumstances. The Hon'ble Apex Court in case of **Prathvi Raj Chauhan Vs. Union of India and others** reported in **(2020) 4 SCC 727** wherein it is held that where *prima facie* case not made out, anticipatory bail can be

(6)

granted in appropriate circumstances, with a cautious exercise of power. Sections 18 and 18-A of the 1989 Act have no application where prima facie case is not made out.

10. In view of the said observation of the Hon'ble Apex Court, here on perusal of the First Information Report and investigation papers it reveals that there is no allegation against the appellant Nos.1 and 3 in Criminal Appeal No.109/2024, against the appellant in Criminal Appeal No.93/2024 and against the appellants in Criminal Appeal No.96/2024, therefore bar under Section 18 is not attracted to reject their bail application. Learned trial Court has ignored this position and erroneously rejected the application for grant of anticipatory bail. In view of that, the Criminal Appeal No.109/2024 deserves to be allowed partly, whereas Criminal Appeal No.93/2024 deserves to be allowed and Criminal Appeal No.96/2024 also deserves to be allowed as bar under Section 18 is not attracted against the appellants therein. Accordingly, I proceed to pass following order:

ORDER

- i) The Criminal Appeal No.109/2024 is partly allowed, the Criminal Appeal No.93/2024 and Criminal Appeal No.96/2024 are allowed.
- ii) The order dated 05.02.2024 passed by the learned Special Court, Washim rejecting the anticipatory bail application of the present appellants

(7)

excluding Shivaji Kavhar is hereby quashed and set aside.

(iii) In the event of their arrest, in connection with Crime No.17/2024 for the offences punishable under Sections 143, 341, 323, 427, 504 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities), the appellant No.(1) **Shivshankar s/o Vitthal Kavhar** and No.(3) **Sandip s/o Ramrao Nirmale** in Criminal Appeal No.109/2024, the appellant in Criminal Appeal No.93/2024 **Shankar s/o Vijay Kakde @ Gaurishankar Vijyanand Kakde** and the appellants in Criminal Appeal No.96/2024 namely, No.(1) **Dnyaneshwar Ramdas Tupe**, No.(2) **Gajanan Ramdas Tupe**, No.(3) **Eknath Dagdu Ingole**, No.(4) **Krushna Keshav Nirmale**, No.(5) **Abhishek Shyamrao Nirmale** shall be released on anticipatory bail on executing PR bond in the sum of Rs.25,000/- each with one solvent surety in the like amount.

iv) The Criminal Appeal in respect of the appellant No.2 in Appeal No.109/2024 namely **Shivaji Vitthal Kavhar** is hereby rejected.

v) The appellants who are released on anticipatory bail shall attend the concerned Police Station as and when required for the investigation purpose and shall cooperate with the investigating agency.

(8)

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

10. All the appeals are disposed of.

(URMIL A JOSHI-PHALKE, J.)

Sarkate.