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

CRIMINAL APPEAL NO.111 OF 2024

Aaditya Raju Dayal,
Aged about 19 Years,
Occupation : Education,
R/o Savana, Taluka Mahagaon,
District : Yavatmal.

.... APPELLANT

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Mahagaon, District : Yavatmal.
2. Hritik Siddharth Khade,
Aged 23 Years, Occupation : Labourer,
R/o Savana, Taluka Mahagaon,
District : Yavatmal.

.... RESPONDENTS

Mr. A. A. Zade, Advocate for appellant.
Ms. Swati Kolhe, APP for respondent No.1/State.
Ms. Falguni Badani, appointed Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 29.04.2024

ORAL JUDGMENT :

1. Heard.
2. **Admit.**
3. By this appeal, the appellant has challenged the order
passed by the learned Additional Sessions Judge, Pusad, District

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Yavatmal passed in Misc. Criminal Bail Application No.451/2023 dated 29.01.2024 by which the application of the present appellant for grant of anticipatory bail was rejected.

4. The accusations against the present appellant is on the basis of report lodged by Rutik Sidhartha Khade alleging that on 29.11.2023 at about 8.00 p.m., he was standing on the road, at that time his cousin Vivek Kachru Khade was proceeding along with his cattle, at the relevant time, present appellant along with other co-accused both resident of the same village, parked their motorcycle on the road, on which his brother asked them why they have parked the motorcycle on the road and there was hot exchange of words between them. The informant has intervened and the co-accused and the present appellant abused him on his caste by saying "मला ए मा-या, धेडग्या, हलकट जातीच्या अशी जातिवाचक अशिल शिवीगाळ करू लागला". On that, present appellant asked them why they are abusing them on their caste, but they were assaulted by the present appellant and other co-accused. On the basis of said report, the police have registered the crime under Sections 143, 147, 324, 506 read with Section 149 of the Indian Penal Code, 1860 and Sections 3(2)(va), 3(1)(r) and 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act of 1989').

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5. After registration of the crime, the appellant approached to the Special Court for grant of bail, in the event of arrest. However, the learned trial Court rejected the application on the ground that the bar under Section 18-A is attracted and therefore, the application for grant of anticipatory bail is not maintainable.

6. Being aggrieved and dissatisfied with the same, present appeal is preferred by the appellant. Learned counsel for the appellant submitted that as far as the present appellant is concerned, general allegation is made against him. He further submitted that mere reference of the caste is not sufficient to attract the provisions of the Act of 1989. The appellant is appearing for the examination of the Police Constable and submitted that if he is send behind bar, he will loose his opportunity to qualify for the service.

7. He further submitted that as far as the custodial interrogation is concerned, which is not required and bar under Section 18-A is not attracted as mere reference of the caste is not sufficient to attract the provisions.

8. Learned APP and learned appointed Counsel for the respondent No.2 strongly opposed the said application on the ground that there is a specific allegations against the present appellant to attract the provisions of the Act of 1989 therefore,

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the specific bar is there which attracted and therefore the learned trial Court rightly rejected the application and therefore, appeal deserves to be dismissed.

9. Having heard the learned counsel for the appellant and learned APP for the State and learned appointed Counsel for the respondent No.2, perused the investigation papers. On perusal of the recitals of the FIR, it reveals that the allegation against the present appellant is that he has abused the informant and his brother by referring to his caste. As far as the statement under Section 164 of the Code of Criminal Procedure is concerned, the informant and his brother made the general allegations against the appellant.

10. Now, it is well settled that grant of anticipatory bail under Section 438 of the Cr.P.C. is barred in respect of the offence under the Act of 1989. However, where the prima facie case is not made out anticipatory bail can be granted in an appropriate circumstances with a cautious exercise of power. This aspect whether the bar is attracted or not attracted is dealt by the Full Bench of the Rajasthan High Court **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 the remedy of

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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 the 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 First Information Report 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 the 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.

11. This issue is also dealt by this Court in **Ratnakala Martandrao Mohite Vs. The State of Maharashtra and another** reported in **2020 ALL MR (Cri.) 334** and **Navnath**

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s/o Dalsing Rathod @ Aade and ors. Vs. State of Maharashtra through Police Inspector Karmad Police Station, Aurangabad and another in Criminal Appeal No.968/2018 dated 25.04.2019 and Jagdish Sajjankumar Banka Vs. State of Maharashtra and another reported in **2023 SCC OnLine Bom 581**. In the case of **Vilas Pandurang Pawar and anr. Vs. State of Maharashtra and others** reported in **2012 ALL MR (Cri) 3743 (S.C.)**, wherein the Hon'ble Apex Court held that no Court shall entertain an 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. Similar principles are also laid down by this Court. In such circumstances, it is evident that in spite of bar under Section 18 of the Act of 1989 for invoking the powers under Section 438 of the Cr.P.C. It is still open to this Court to find out by looking into FIR as to whether prima-facie case is made out by the complainant against the appellant. Thus the application under Section 438 of the Cr.P.C. needs to be considered for ascertaining whether there is material to make out a prima-facie case for offences punishable under the Act of 1989.

12. Considering the well settled law and the facts of the present case, it is also well settled that mere reference of the

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caste in the FIR is not sufficient to attract the provisions of the Act of 1989. Considering the recitals of the FIR, as the contents shows that while abusing the caste was referred by the present appellant. Thus, the bar under Section 18A would not attract as mere reference of the caste is not sufficient to attract the provisions of the Atrocities Act. Moreover, the custodial interrogation of the present appellant is not required as nothing is to be recovered from the present appellant. In view of that, the appeal deserves to be allowed by granting anticipatory bail to the present appellant. In view of that, I proceed to pass following order.

ORDER

- (i) The appeal is allowed.
- (ii) In the event of arrest, in connection with Crime No. 642/2023 registered with Police Station, Mahagaon, District Yavatmal for the offences punishable under Sections 143, 147, 324, 506 read with Section 149 of the Indian Penal Code, 1860 and Sections 3(2) (v-a), 3(1)(r), 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellant- **Aaditya Raju Dayal** shall be released on anticipatory bail on furnishing of P.R. Bond of Rs. 25,000/- with one solvent surety in the like amount.
- (iii) The order passed by the learned Additional Sessions Judge, Pusad, District Yavatmal, in Misc. Criminal Bail Application No.451/2023 dated 29.01.2024 is quashed and set aside.
- (iv) The appellant shall attend the concerned Police Station as and when required for the investigation

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purpose and shall cooperate with the investigating agency.

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

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

14. The appeal is disposed of.

(URMIL A JOSHI-PHALKE, J.)

Sarkate.