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

CRIMINAL APPEAL NO.159 OF 2024

Kamar Ali s/o Yunus Ali Sayyad,
Age :- 35 Years, Occupation:- Shopkeeper,
R/o. Renukamata Mandir Chouk,
Tahsil Bramhapuri, District Chandrapur. **APPELLANT**

// VERSUS //

- 1] State of Maharashtra,
Through Police Station Officer,
Bramhapuri, District Chandrapur.
- 2] Shri. Ajay Harishchandra Chahande,
Aged 28 Years, Occupation :- Service,
R/o. Sarvjanik Bandhkam Vibhag,
Bramhapuri, District Chandrapur. **RESPONDENTS**

Mr. A. M. Hunge, Advocate h/f Mr. O. K. Masurke, Advocate for
appellant.

Mr. A. B. Badar, APP for respondent /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 03.05.2024

ORAL JUDGMENT :

1. Heard.
2. **Admit.**
3. By this appeal, the appellant has challenged the order dated 15.02.2024 passed by the learned Additional Sessions Judge, Chandrapur in Misc. Criminal Bail Application No.60/2024 whereby the anticipatory bail application of the present appellant is rejected.

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4. The appellant is apprehending arrest at the hands of police in connection with Crime No.15/2024 registered with Police Station Bramhapuri, District Chandrapur for the offence punishable under Sections 294, 353, 506 read with Section 34 of the Indian Penal Code, 1860 and under Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'the Act of 1989'), the anticipatory bail application of the present appellant is rejected by observing that there is bar under Section 18 of the Act of 1989.

5. Being aggrieved with the same, the present appeal is preferred by the appellant on the ground that the observation of the learned trial Court as to the fact that, the bar under Section 18 of the Act 1989 is attracted itself is erroneous. It is further submitted that the name of the present appellant is not appearing in the FIR. During investigation, no evidence is collected to show that the present appellant is involved in the said crime. It is further submitted that the crime is registered on the basis of report lodged by one Ajay Harischandra Chahande. In the said FIR it is alleged that on 12.01.2024 four persons entered into the office of Public Works Department (PWD) and abused the informant, one of the persons was unknown. It is further alleged that they have abused on his

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caste. On the basis of the said report, police have registered the crime against the co-accused and one unknown person.

6. Learned Counsel for the appellant submitted that the investigating agency is attempting to arrest the present appellant as an unknown person. In fact, during the investigation no witness came forward to say that he is the unknown person, who was present at the time of the incident. He submitted that as there is no *prima facie* case against the present applicant, bar under Section 18 of the Act of 1989 is not attracted, therefore interim protection granted to him deserves to be confirmed.

7. Learned APP strongly opposed the said appeal on the ground that there is bar under Section 18 of the Act of 1989, as during investigation the involvement of the present appellant is revealed. Learned APP further submitted that though none of the witnesses have not stated the description of the present appellant, but during investigation the Investigating Officer has collected one video and which is transferred in the pen drive which shows the involvement of the present appellant in the alleged incident. Considering the *prima facie* case, bar under Section 18 of the Act of 1989, is attracted and therefore, the learned trial Court has rightly rejected the application and therefore, appeal deserves to be dismissed.

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8. Having heard the learned Counsel for the appellant and learned APP for the State, perused the investigation papers. As far as the description of the unknown person is concerned, as alleged by the informant in the First Information Report, none of the witness have stated that description. The Investigating Officer has also not collected any material to show that the present appellant is the person who was present at the time of the incident. Though, one panchnama was drawn by the Investigating Officer to show that in one video the presence of the present appellant is noted, but no statement was recorded or panchnama was also not drawn to show that what is seen in the said video. Thus, considering the entire investigation material there is no *prima facie* material to show that the unknown person was the present appellant who involved in the present crime. As far as the bar under Section 18 of the Act of 1989, is concerned, it is now well settled that when there is no *prima facie* case the bar is not attracted. The Full Bench of 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 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

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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. The similar view is taken by this Court in **Ratnakala Martandrao Mohite Vs. The State of Maharashtra and another** reported in **2020 ALL MR (Cri.) 334**, **Navnath s/o Dalsing Rathod @ Aade and others Vs. State of Maharashtra Through Police Inspector Karmad Police Station, Aurangabad and another decided on 25.04.2019 in Criminal Appeal No.968/2018** and **Jagdish Sajjankumar Banka Vs. State of Maharashtra and others** reported in **2023 SCC Online Bom 581**.

9. The point of controversy in the present appeal is on the question of exercising the power under Section 438 of the Code of Criminal Procedure. The appellant preferred this appeal by resorting the remedy under Section 14A of the Atrocities Act

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and submitted that the *prima facie* case is not made and therefore, bar under Section 18 is not attracted. After going through the evidence, admittedly, there is no material on record to show that the unknown person is the appellant, as no description is given by any of the witnesses. The Investigating Officer has also could not connect the present appellant by saying that he is the person who was present at the time of the incident. Thus, considering the fact that the *prima facie* case is not made out against the present appellant from the investigation papers. After considering the allegation as it is raised in the FIR, only reference of the caste appears to be there. It is now well settled that mere reference of the caste is not sufficient to attract the provisions of the Atrocities Act. To attract the Section 3 there should be insult or abused with intent to humiliate such person. Considering the fact of the present case, the bar under Section 18 of the Act of 1989, is not attracted and therefore, the interim relief granted to the present appellant deserves to be confirmed. In view of that, I proceed to pass following order:

(i) The appeal is allowed.

(ii) In the event of arrest in connection with Crime No.15/2024 registered with Police Station Bramhapuri, District Chandrapur for the offences punishable under Sections 294, 353, 506 read with Section 34 of the Indian Penal Code, 1860 and under Section 3(1)(r) and 3(1)(s) of the Scheduled Castes and the

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Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellant – **Kamar Ali s/o Yunus Ali Sayyad** shall be released on anticipatory bail, on executing P.R. Bond in the sum of Rs.25,000/- with one solvent surety in like amount.

(iii) The order dated 15.02.2024 passed by the learned Special Judge, rejecting the Misc. Criminal Bail Application No.60/2024, is hereby quashed and set aside.

(iv) The appellant shall not induce, threat or pressurize any witnesses who acquainted with the facts of the case.

10. The appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate.