



Judgment

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

CRIMINAL APPEAL NO.204 OF 2024

Shri Ashwin Sahadev Chinchulkar,
age 30 years, occupation business,
r/o Shivshakti Nagar, Datawadi,
district Nagpur city. **Appellant.**

:: VERSUS ::

1. State of Maharashtra,
Through Police Station Officer,
MIDC Police Station,
District Nagpur City.

2. XYZ (Victim) in Crime No.297/2024
through Police Station Officer,
MIDC Police Station,
District Nagpur City. **Respondents.**

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Shri S.P.Bhandarkar, Counsel for the Appellant.
Mrs.P.Arbat, Counsel Appointed for Resp. No.2/Victim.
Shri N.B.Jawade, Additional Public Prosecutor for Resp.
No.1/State.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 18/06/2024
PRONOUNCED ON : 21/06/2024

JUDGMENT

1. By this appeal under Section 14A of the Scheduled
Castes and the Scheduled Tribes (Prevention of Atrocities) Act,
1989 (the SC & ST Act), the appellant (the accused) has

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challenged order below Exhibit-1 dated 6.4.2014 passed by learned ASJ and Special Judge, SC & ST Act, Nagpur in Criminal Bail Application No.857/2024 whereby application filed by the accused for grant of anticipatory bail came to be rejected.

2. The appellant was arraigned as accused on the basis of report lodged by the victim who is a grown up lady on an allegation that she received a friend request from the accused on Facebook to which she replied and there was exchange of messages between them. In the month of August 2023, she was called by the accused in a hotel namely “Royal Stay” and was subjected for sexual assault. On the basis of the said report, the police registered the crime against the accused.

3. After registration of the crime, the accused approached the Special Court at Nagpur for grant of bail by filing an application bearing Criminal Bail Application No.857/2024 which was rejected by the trial court by observing that there is a bar under Section 18 of the SC and ST Act.

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4. Being aggrieved and dissatisfied with the order impugned in the appeal, the present appeal is preferred on ground that the victim is a grown up lady and there is no statement made in the First Information Report that the accused was knowing that she belongs to the Scheduled Caste and, thereafter, having knowledge of the same, she was subjected for sexual assault. In fact, it was consensual relationship between them. Now, the false report is lodged against him. As far as custodial interrogation is concerned, the same is not required.

5. Learned counsel Shri S.P.Bhandarkar for the accused, submitted that recital of the First Information Report shows that the victim on her own approached the accused on his telephonic call and there was physical relationships between them. The First Information Report is lodged approximately after 3 months of the incident. He further submitted after registration of the crime, the victim filed an application before the Investigation Officer that out of misunderstanding, this report was filed. He further submitted that subsequent to the said communication, after a gap of two months, mother of the victim filed an application that the said

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application was obtained by the police officer under pressure. He submitted that only to extract money from the accused, this false report is lodged. He also placed on record photocopy of a cheque issued to the victim dated 13.3.2024 bearing no.557508 drawn on State Bank of India of Rs.2.00 lacs, which sufficiently shows that only to extract the money, the First Information Report is lodged by the victim against the accused. He further submitted that as regards the bar under Section 18 of the SC and ST Act, now catena of decisions shows that the bar is not attracted when *prima facie* case is not made out.

6. In support of his contentions, learned counsel for the accused placed reliance on the decision of the Co-ordinate Bench of this Court in the case of **Sajjan vs. The State of Maharashtra and ors¹** wherein it is observed that informant says that she and appellant started loving each other and, therefore, there was no question of hurdle of caste. The informant has not stated the place where appellant abused her in the name of caste. Such abuse should be in public view in order to attract the offence. The relationship appears to be consensual. The offence under the

¹ 2023(3) Mh.L.J. (Cri) 637

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Atrocities Act is not made out and physical custody of the appellant is not necessary and the bail application was allowed.

7. Learned counsel for the accused further placed reliance on the decision of the Honourable Apex Court in the case of **Vilas Pandurang Pawar and anr vs. State of Maharashtra and ors**² wherein it is held that Section 18 of the SC and ST Act creates a bar for invoking Section 438 of the Code of Criminal Procedure. However, a duty is cast on the court to verify averments in the complaint and to find out whether an offence under Section 3(1) of the SC and St Act has been *prima facie* made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with an intent to humiliate by calling with caste name, the accused persons are not entitled for grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC and ST Act, no Court shall entertain an application for anticipatory bail, unless it *prima facie* finds that such an offence is not made out.

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8. Learned Additional Public Prosecutor Shri N.B.Jawade for the State strongly opposed the application on ground that the statement of the victim sufficiently shows that she was called by the accused on a pretext of meeting him and subjected her for sexual assault. The victim belongs to the Scheduled Caste and the bar is attracted under Section 18A of the SC and St Act. In view of the said bar, the appeal deserves to be dismissed.

9. Learned counsel Mrs.P.Arbat for the victim, also endorsed contentions made by learned Additional Public Prosecutor for the State and submitted that *prima facie* case is made out against the accused. The custodial interrogation of the accused is required for the purpose of further investigation. She denied regarding the consensual relationship between the victim and the accused. She submitted that considering gravity of the offence, the appeal deserves to be dismissed.

10. After hearing learned counsel for the accused, learned counsel for the victim, and learned Additional Public Prosecutor for the State and perusing investigation papers, it would show that the victim and the accused got acquaintance with each other

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through the Facebook. It further reveals that they communicated with each other and there was exchange of messages between them. Prior to the incident also, they met each other. As per allegations, in the month of August 2023, the accused called her in one hotel and subjected her for sexual assault. During the investigation, the Investigating Officer recorded statement of the Hotel Manager, who also substantiated contentions that the accused had been to his hotel along with his friend. It also shows that the accused stayed in his hotel along with his friend on six occasions.

11. Before adverting to contentions, as to the consensual relationship, it is necessary to address whether the bar under Section 18 of the SC and ST Act is attracted and when it is attracted.

12. The Honourable Apex Court, while dealing with bar under Section 18 of the SC and ST Act, observed that Section 18 of the SC and ST Act creates a bar for invoking Section 438 of the Code of Criminal Procedure, where a *prima facie* case is made out. Thus the scope of Section 18 of SC and ST Act read with Section 438 of

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the Code of Criminal Procedure is such that it creates a specific bar for grant of anticipatory bail. When an offence is registered against a person under provisions of the SC and ST Act, no court shall entertain an application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. The court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code of Criminal Procedure, provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence.

13. As far as the bar under Section 18 of the SC and ST Act is concerned, it is settled by the catena of decisions including the decision of the Honourable Apex Court in the case of **Prathvi Raj Chauhan vs. Union of India and ors**³ wherein it is held that grant of anticipatory bail under Section 438 of the Code of Criminal

³ (2020)4 SCC 727

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Procedure is barred in respect of offence under the 1988 Act. However, where a *prima facie* case is not made out, anticipatory bail can be granted in appropriate circumstances with a caution of exercise of powers. Section 18A of the SC and ST Act has no application where *prima facie* case is not made out. However, for evaluating *prima facie* case, re-appreciation of evidence is not required.

14. While considering the bar under section 18 of the SC and ST Act and considering maintainability of application, it is necessary to refer the settled law in view of the Full Bench judgment of the Rajasthan High Court in the case of **Virendra Singh vs State Of Rajasthan**⁴ 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 a remedy of anticipatory bail and it is only in the circumstances where there is absolutely no material to inter 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

4 2000 Cri LJ 2899

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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 in our view 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. The full bench of Rajasthan High Court further considered that it has to be borne in mind that if a person is even alleged of accusation of committing an offence

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under the S.C. S.T. 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 inter 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. It is held that from the FIR itself the ingredients of the offence as laid down under section 3 of the Act itself is to ascertain the bar created by section 18 would not be allowed to operate against an accused and only in that event his application for anticipatory bail would be dealt with by the concerned court to determine whether the Act of 1989 can be said to be rightly applicable against the accused any other interpretation, would go against the letter and spirit of the clear provision of section 18 of the Act of 1989 which has already stood the test of reasonableness and constitutional validity upto the level of the Apex Court.

15. The above said observations of the Rajasthan High Court are considered by this Court also in the case of **Ratnakala**

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Martandrao Mohite vs. The State of Maharashtra & anr⁵; Navnath s/o Dalsing Rathod @ Aade and others v. State of Maharashtra Through Police Inspector Karmad Police Station, Aurangabad and another⁶, and Jagdish Sajjankumar Banka v. State of Maharashtra and another⁷. Thus, it is clear from observations of the Full Bench decision of the Rajasthan High Court from which it reveals that if the court forms an opinion that there is such material, bar under Section 18 comes into play if material is not sufficient to make out *prima facie* case of commission of the offence punishable under the SC and ST Act against acquittal. The court is expected to consider the application as provided under Section 438 of the Criminal Procedure Code.

16. Learned counsel for the accused submitted that there was consensual relationship and pointed out from recital of the First Information Report that the victim met the accused and there was exchange of messages which sufficiently show nature of relationship between them. He placed reliance on the decision of this court at Principal Seat at Bombay in the case of **Sameer Amrut**

⁵ 2020 ALL MR (Cri) 334

⁶ Law Finder Doc ID # 1486431

⁷ 2023 SCC OnLine Bom 581

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Kondekar vs. State of Maharashtra⁸ wherein it is observed that perusal of the First Information Report and copies of emails messages, face book posts reveals that offence under Section 376 is not made out and released accused on bail. He also placed reliance on the decision in the case of **Ganesh Dnyanoba Patil vs. State of Maharashtra**⁹ wherein this court referred the observation of the Honourable Apex Court in Criminal Appeal No. 1443 of 2018 arising out of S.L.P. (Criminal) No. 6532 of 2018 (**Dr. Dhruvaram Murlidhar Sonar vs. The State of Maharashtra and ors**) particular paragraph No.20, which is reproduced, as under:

"20. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his

8 2016 SCC OnLine Bom 7292

9 2019 SCC OnLine Bom 4538

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control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 of the Indian Penal Code."

17. From the statement of the victim, it reveals that prior to the incident also, on the call of the accused, she went to meet him. As far as their relationship is concerned, statement of the Hotel Manager also shows that the accused had been to his hotel along with his friend on six occasions. This statement nowhere reveals that any displeasure was seen by him or any abnormal behaviour of the victim was seen when she went along with the accused in the hotel. Their previous visit to the said hotel sufficiently shows nature of their relationship.

18. In the light of the above observations of the Honourable Apex Court and considering investigation papers collected during the investigation, it shows that relationship between the accused and the victim was consensual in nature. There is no statement in the First Information Report that the accused was aware about the fact that the victim belongs to the Scheduled Caste. In the light of

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the observation of the Honourable Apex Court, there is a clear distinction between rape and consensual sex.

19. In view of the above, as the case for grant of pre-arrest bail is made out, *interim* order dated 8.4.2024 passed by this court deserves to be confirmed. Accordingly, I pass following order:

ORDER

(1) The Criminal Appeal is **allowed**.

(2) The *interim* order dated 8.4.2024 stands confirmed.

(3) In the event of arrest of the accused, in connection with Crime No.297/2024 registered with the non-applicant/police station for offences punishable under Sections 376(2)(n) and 506 of the Indian Penal code, 1860 and Section 3(1)(w)(i)(ii), 3(1)(v)(5) and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act), 1989, he be released on bail on he executing a P.R.Bond in the sum of Rs.25,000/- with one solvent surety of the like amount.

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(4) The accused shall attend the police station as when his presence is required by the Police Station Officer, till filing of the chargesheet.

(5) Fees of learned counsel Mrs.P.Arbat appointed for respondent No.2/victim are quantified and the same be paid to her as per Rules.

The appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!