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

CRIMINAL APPEAL NO.217 OF 2024

Abhishek s/o Ravindra Raut,
Aged about 24 Years old,
Occupation : Education,
R/O. Morgaon Kakad,
Taluka Barshitakli,
District Akola.

..... APPELLANT

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Khadan, Akola, District Akola.
2. Pradip Prabhakar Gopnarayan,
Aged about 46 Years old,
Occupation: Labour, R/o. Ward No.14
near Boudh Vihar, Malkapur,
District Akola.

.... RESPONDENTS

Mr. Mohan Agrawal, Advocate h/f Mr. S. V. Sirpurkar,
Advocate for appellant.
Ms. Soniya Thakur, APP for respondent No.1/State.
Ms. Anuprita S. Mishrikotkar, appointed Advocate for
respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 15.07.2024

ORAL JUDGMENT :

1. Heard.
2. **Admit.**

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3. By preferring this appeal, the appellant has challenged the order passed by the learned Special Judge and Additional Sessions Judge, Akola dated 01.04.2024 in Criminal Application (ABA) No.148/2024 by which the application for grant of anticipatory bail of the present appellant is rejected.

4. The appellant is apprehending arrest at the hands of police, as the crime is registered against some of the persons on the basis of report lodged by Pradip Prabhakar Gopnarayan. As per the allegation on 03.12.2023 at about 8.30 p.m. one Amit Gawali, Sahil Malokar, Sujit Gawali and others were celebrating birthday of one Rishabh Kale. At that time 10 to 15 bikes came there and some of them were burning the crackers as well. There was a rift between the informant, the other prosecution witnesses and the co-accused. In the said incident, the informant and other prosecution witnesses are assaulted and the informant was also abused by them on the caste. In the said incident, one Sujit has assaulted Amit Gopnarayan, whereas Amit assaulted with the knife on the chest of Rajesh Gopnarayan. Co-accused Rishabh assaulted Shubham by using the knife and Sahil assaulted Pawan Gopnarayan. On the basis of said report, police have

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registered the crime against the co-accused and the present applicant also.

5. Learned Counsel for the applicant submitted that as far as the present applicant is concerned, no specific role is attributed to him. After investigation is completed and charge-sheet is filed wherein also the name of the present appellant was shown as Abhijit Ravi Raut. As the name of the present appellant is also not appearing in the charge-sheet, but the appellant is apprehending the arrest and therefore, he approached to the trial Court. The learned trial Court has not considered that no *prima facie* case is made out against the present appellant and therefore, the bar under Section 18A is not attracted but without considering the same the bail application of the present appellant was rejected.

6. It is further submitted by the learned Counsel for the appellant that from the entire charge-sheet, no role is attributed to the present appellant, even none of the witnesses were stating about the presence of the present appellant on the spot. Thus, in view of that, no offence is made out against the present appellant under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

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In view of that, interim protection granted to the present appellant deserves to be confirmed.

7. Learned APP for the State and learned Counsel for the respondent No.2 strongly opposed the said appeal on the ground that the informant as well as 3 to 4 prosecution witnesses have sustained the injuries in the said incident. The bar under Section 18A is attracted in view of that, the prayer for grant of anticipatory bail deserves to be rejected.

8. After hearing the learned Counsel for the appellant and learned APP for the State as well as learned Counsel for the respondent No.2, perused the entire investigation papers including the statement of the witnesses. After perusal of the entire charge-sheet, admittedly, no role is attributed to the present appellant, even his name is neither mentioned in the statement of the witnesses nor in the FIR. It is now well settled that when *prima facie* case is not made out against the accused to attract the provisions of the Act of 1989, the bar under Section 18 or 18A is not attracted. The name of the present appellant is not mentioned in the charge-sheet as different name i.e. Abhijit Ravi Raut is mentioned. But considering the apprehension in the mind of the present

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appellant, mere criminal antecedents are not sufficient to reject the prayer of the appellant for grant of anticipatory bail. Considering that no *prima facie* case is made out against the present appellant to show his involvement in the alleged offence. At this stage, the interim protection granted to the present appellant deserves to be confirmed. Accordingly, I proceed to pass following order.

ORDER

(i) Criminal Appeal is allowed.

(ii) The order dated 01.04.2024 passed by the learned Special Judge and Additional Sessions Judge, Akola in Criminal Application (ABA) No.148/2024 is quashed and set aside.

(iii) In the event of arrest in connection with Crime No.662/2023 registered with Police Station Khadan, Akola District Akola for the offences punishable under Sections 143, 147, 148, 201, 307, 323, 324, 326, 504 and 506 read with Section 149 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(2)(v), 3(2)(va) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities Act), 1989 and Section 4/25 of the Arms Act, the appellant **Abhishek s/o Ravindra Raut** shall be released on anticipatory bail on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iv) The appellant shall attend the concerned Police Station as and when required for the investigation purpose.

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

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

10. The appeal is disposed of.

(URMIL A JOSHI-PHALKE, J.)

Sarkate.