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

CRIMINAL APPEAL NO.242 OF 2024

Sujay S/o. Vinayakrao Deshmukh,
Aged about :- 28 Years,
Occupation :- Labour,
R/o Rukhmini Nagar, Amravati
Tq. and Dist. Amravati.

.... APPELLANT

// VERSUS //

1. The State of Maharashtra,
Through Police Station Officer,
Police Station, Frezarpura, Amravati,
Tq. and Dist. Amravati.
2. Mina Prakash Padhagamod,
Aged about:- 26 Years, Occupation:- Business
R/o. Deep Jaya Colony,
Tapovan, Amravati,
Tq. and Dist. Amravati.

.... RESPONDENTS

Mr. S.I. Ghatte, Advocate for appellant.
Ms. H.N. Prabhu, APP for respondent No.1/State.
Ms. Radha M. Mishra, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 09.05.2024

ORAL JUDGMENT :

1. Heard.
2. **Admit.**
3. By preferring this appeal, the appellant has
challenged the order passed by the Special Court in Criminal Bail

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Application No.210/2024, by which the application of the present appellant for grant of anticipatory bail is rejected.

4. The appellant is apprehending arrest at the hands of police as one crime is registered against him vide Crime No.186/2024, for the offence punishable under Sections 452, 324, 323, 427 and 506(2) read with Section 34 of the Indian Penal Code and under Section 3(1)(r) and 3(1)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. After registration of the crime, the appellant approached to the Special Court for grant of bail, but in view of the bar under Section 18, the application of the present appellant for grant of anticipatory bail is rejected. Being aggrieved and dissatisfied with the same, present appeal is preferred by the appellant.

5. Learned Counsel for the appellant submitted that as far as the recitals of the First Information Report is concerned, from which, it reveals that the informant has performed the inter-caste marriage with one Shubham Sanjay Mishra and she is residing along with him and the other family members. She alleged that she was running the beauty parlor from last three years and the place where she running the beauty parlor is obtained by her on rent from applicant Sujay Deshmukh. Some

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consideration amount was remained to be paid and therefore, there was dispute between them. On the day of incident i.e. on 29.02.2024 at about 9.00 pm. the appellant came to her shop and abused her on her caste and also assaulted her, due to which she has sustained the injuries. On the basis of said report, police have registered the crime against the present appellant.

6. Learned Counsel for the appellant submitted that as far as the application of the Atrocities Act is concerned, which is not applicable as there is no even whisper about the abuses on the caste, it has only mentioned that he has abused her on her caste. The exact words are not mentioned. He further submitted that as far as injuries are concerned, which is simple in nature and even she was not indoor patient. Considering the nature of the injury also the incarceration of the present appellant is not required. In view of that, he be protected by granting anticipatory bail.

7. Learned APP and learned appointed Counsel strongly opposed the appeal on the ground that there is a bar under Section 18 and 18A and therefore, the learned trial Court has rightly rejected the application.

8. Having heard the learned Counsel for the appellant and learned APP for the State and learned Counsel appointed for respondent No.2 and perused the investigation papers. As far as injuries are concerned, which is simple in nature. The injured is already discharged from the hospital and there is no apprehension of any harm, due to the said injuries. As far as the provisions of the Atrocities Act are concerned, admittedly, in the FIR except the wording that she was abused on her caste, no exact words are mentioned, even there is no reference on the caste also. Learned trial Court observed that there is a bar under Section 18A, it now well settled that when *prima facie* case is not made out, the bar under Section 18 or 18A would not attract. The Hon'ble Apex Court in **Prathvi Raj Chauhan Vs. Union of India and others** reported in **(2020) 4 SCC 727**, wherein it is held that grant of anticipatory bail under Section 438 Cr.P.C. is barred in respect of offences under the 1989 Act. However, where *prima facie* case not made out anticipatory bail can be granted in appropriate circumstances, with a cautious exercises of power. Sections 18 and 18-A of the 1989 Act have no application where *prima facie* case is not made out. However, for evaluating the *prima facie* case, reappraisal of the evidence is not required.

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9. After considering the investigation papers, admittedly, there are no exact words mentioned as far as the caste is concerned, considering the same, admittedly, *prima facie* case is not made out against the present appellant and therefore, bar under Section 18A is not attracted. The observation of the learned trial Court to that aspect is erroneous and therefore, the order passed by the learned trial Court deserves to be quashed and set aside.

10. Accordingly, I proceed to pass following order :

(i) The appeal is allowed.

(ii) The order dated 16.04.2024 passed by the Special Court and Additional Sessions Judge, Amravati in Bail Application No.210/2024, is hereby quashed and set aside.

(iii) In the event of arrest, the appellant **Sujay S/o. Vinayakrao Deshmukh**, 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, in connection with Crime No.186/2024, for the offence punishable under Sections 452, 324, 323, 427 and 506(2) read with Section 34 of the Indian Penal Code and under Section 3(1)(r) and 3(1)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

(iv) The appellant shall attend concerned Police Station, as and when required for the investigation purpose and shall co-operate the investigating agency.

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

The Criminal Appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate.