



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

CRIMINAL APPEAL NO.244 OF 2024

Harish s/o Mohan Gwalbanshi
Aged about 49 years,
Occupation – Corporator,
R/o. Makardhokda, Near Hanuman Mandir,
Katol Road, Nagpur

...APPELLANT

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Police Station Gittikhadan,
Nagpur
2. Mahesh Gajanan Uikey
Aged about 38 years,
Occ. Security Guard,
R/o. Vayusena Nagar, Basti,
Hajari Pahad, Nagpur

...RESPONDENTS

Mr. S.P. Bodalkar, Advocate for the appellant.
Ms S. Thakur, APP for the State.
Mr. B.T. Sugandh, Advocate (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : JULY 23, 2024.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel
for the parties.

2. This is an appeal under Section 14-A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities Act' for short), the appellant has challenged the order dated 18/04/2024 passed by the Additional Sessions Judge-8 and Special Judge, Nagpur rejected the anticipatory bail application of the appellant in Criminal Bail Application No.990/2024.

3. The appellant is apprehending arrest at the hands of police in connection with Crime No.246/2024 registered at police station Gittikhadan, Nagpur for the offence punishable under Sections 387, 447, 504 and 506 of the Indian Penal Code and Sections 3(1)(s), 3(1)(f), 3(1)(g) and 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

4. The accusation against the present appellant is on the basis of report lodged by the informant alleging that his father Gajanan Uikey and his uncle Anadrao Uikey are the owners of land admeasuring 1.31 HR in mouza Hazaripahad, S.No.20, Sheet No.194/22. The said land is located between navin Katol Naka and Wadi road and informant are in possession of the same. Due to the construction of North-South ring road, the said land is divided into East and West side.

5. In view of the order passed by the Tahsildar dated 17/12/2021, the informant are declared as owner of the said land. The appellant and his associates illegally encroached upon the west side of the said land admeasuring 4000 sq.ft. and built shops, tea stall and hotel and have taken illegal electricity and water connections. On enquiring by the informant along with them, the informant was abused on his caste. He was insulted by the present appellant. On the basis of said report, police have registered the crime against the present appellant.

6. Learned Counsel for the appellant submitted that mere reference of the caste is not sufficient to attract the provisions under the Atrocities Act, therefore, bar under Section 18A is not attracted. He submitted that moreover the FIR is lodged after two years of the incident, there is no explanation for the said delay. As far as the custodial interrogation is concerned which is not required. In view of that, the interim protection granted to the present appellant deserves to be confirmed.

7. Learned APP and learned Counsel for respondent No.2 strongly opposed the appeal on the ground that the *prima facie* case is made out against the present appellant as the allegation against the present appellant that within the public view he has abused the

informant and his family members, and therefore, bar under Section 18A of the Atrocities Act is attracted. They further submitted that the ad-interim anticipatory bail granted to the present appellant deserves to be cancelled in view of the bar under Section 18A of the Atrocities Act and prays for rejection of the application.

8. I have heard learned Counsel for both the parties. Perused the recitals of the FIR from which it reveals that the alleged incident has taken place on 22/04/2022 and the FIR is lodged on 04/04/2024 i.e. approximately after two years. Admittedly, no explanation is put forth by the informant regarding the said delay. As far as the allegation against the present appellant regarding the abuse on his caste is concerned, it appears that the informant was referred by his caste. It is well settled that mere reference of the caste is not sufficient to attract the provisions of the Atrocities Act. As far as the bar under Section 18A is concerned now it is well settled that when *prima facie* case is not made out, the anticipatory bail application is maintainable. At this stage, the investigation papers are considered and from which it reveals that none of the statements reveals that the informant was abused on his caste, there is only reference of the caste which reveals from the various statements recorded during the investigation. In view of that, the interim

protection granted to the present appellant deserves to be confirmed.

Accordingly, I proceed to pass following order :

- (i) The appeal is allowed.
- (ii) The order dated 18/04/2024 passed by the Additional Sessions Judge-8 and Special Judge, Nagpur in Criminal Bail Application No.990/2024, is hereby quashed and set aside.
- (iii) In the event of the arrest, the appellant – Harish s/o Mohan Gwalbanshi in connection with Crime No.246/2024 registered at police station Gittikhadan, Nagpur for the offence punishable under Sections 387, 447, 504 and 506 of the Indian Penal Code and Sections 3(1)(s), 3(1)(f), 3(1)(g) and 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, be released on anticipatory bail on executing P.R. Bond in the sum of Rs.25,000/- (Rs. Twenty five thousand) with one surety in the like amount.
- (iv) The appellant shall attend the concerned police station as and when required for the investigation purpose and shall cooperate with the investigating agency.

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

(vi) Contravention of any of the conditions would lead to cancellation of bail.

9. The appeal is disposed of accordingly.

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

(URMILA JOSHI-PHALKE, J.)

**Divya*