



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

CRIMINAL APPEAL NO. 341 OF 2023

Vitthal S/o Sitaram Chaudhari,
Aged about 68 years, Occu. - Psalmolist,
R/o. Chikhalagad, Tq. Mangrulpir,
District : Washim.

.... **APPELLANT**

// VERSUS //

- 1) State of Maharashtra,
Through Police Station Officer,
Police Station, Asegaon,
Taluka : Mangrulpir,
District : Washim
- 2) Kavita W/o Chetan Ingle,
Aged about 24 years, Occu. Non Known,
R/o. Chikhalagad, Tq. Mangrulpir,
District : Washim.

.... **RESPONDENTS**

Mr. A.M. Tirukh, Advocate for Appellant.
Mr. Nitin Autkar, Additional Public Prosecutor for Respondent No.1.
Mr. Vinay Sharma, Advocate h/f. Ms. Mohini Sharma, Advocate
(appointed) for Respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 13th MARCH, 2024

ORAL JUDGMENT :

1. Heard. **Admit.** Heard finally by consent of the learned
counsel appearing for the parties.

2. By this appeal, the appellant has challenged the order dated 21.04.2023 passed by the Additional Sessions Judge, Mangrulpir, District Washim as Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in Bail Application No.101/2023, rejecting the application of the present appellant for grant of anticipatory bail.

3. The appellant is arraigned as an accused in connection with Crime No.226/2023, registered with Police Station, Mangrulpir, District Washim for the offences punishable under Sections 143, 147, 323, 354, 504 and 506 of the Indian Penal Code (IPC) and under Sections 3(1)(r), 3(1)(s), 3(1)(w)(i), 3(1)(w)(ii) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "**Act of 1989**").

4. The allegations against the present appellant is that on 21.03.2023 at about 11.00 a.m. when the daughter of the informant was playing in the courtyard of the house, the one Fulabai Haribhau Gawande came in front of her house and attempted to cut the hairs of her daughter, at that time, her husband has seen the same and asked her why she is cutting the hairs of her daughter. At the relevant time said Fulabai Gawande left the place. On 22.03.2023 at about 09.00 a.m., said Fulabai Gawande along with the present

appellant came in front of the house of informant and started abusing her as well as her family members on her caste and also assaulted them. It is alleged that the present appellant abused her by saying “मांगटे हो तुम्ही लय माजले तुम्हाले हिसका दाखवा लागते”. She further alleged that the present appellant and other co-accused also outrage her modesty by tearing her blouse and also snatched her Mangalsutra. On the basis of said report, the police have registered the crime against the present appellant.

5. After registration of the crime, the present appellant approached to the Special Court for grant of pre-arrest bail, the Special Court considering the bar under Section 18A of the Act of 1989, rejected the application.

6. Being aggrieved and dissatisfied with the same, present appeal is preferred by the appellant on the ground that the bar under Section 18 or 18A is not attracted, mere reference of the caste is not sufficient to attract the provisions of the Act of 1989. Moreover, there was no intentional insult or humiliation by the present appellant during altercation that words are used and, therefore, the provisions of the Act of 1989 are not applicable. It is further contention of the appellant that now investigation is completed, he has already co-operated with the Investigating Agency, his custodial interrogation

is not required and, therefore, the interim protection granted to him deserves to be confirmed.

7. Heard the learned Counsel Mr. Tirukh for the appellant, he reiterated the said contention and submitted that as far as the allegations are concerned, which are also levelled against the co-accused and the co-accused are already released on bail. On the ground of parity also the present appellant to be released on bail in the event of his arrest. He further submitted that mere reference of the caste is not sufficient to attract the provisions of the Act of 1989. In support of his contention, he placed reliance on *Ajinkya S/o Chandrashekhar Ghogare Vs. State of Maharashtra & Anr.*, reported in **2023 ALL MR (Cri) 2868**, wherein this Court held that circumstances not showing intentional insult or intimidation with intention to humiliate informant within a public view, allegations are vague in nature and bail was granted. He further submitted that in the present case also there was a previous dispute, out of which, the false involvement is there and cross complaints are filed against each other. The intention of insult is not revealed from the investigation papers. No bar is attracted under Section 18A of the Act of 1989. The observations of the trial Court is erroneous and liable to be set

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

8. The learned Additional Public Prosecutor for the State strongly opposed the said application and invited my attention towards the statements of the witnesses as well as statement of the informant and submitted that there is a specific allegations against the present appellant which shows that the appellant has intentionally insulted the informant by abusing her on her caste, which sufficiently shows that bar under Section 18A of the Act of 1989 is attracted and, therefore, the appeal deserves to be dismissed.

9. The learned Counsel Mr. Vinay Sharma for respondent No.2 also reiterated the said contention and submitted that considering the statements of the witnesses, *prima facie* case is made out against the present appellant and in view of the bar under Section 18A of the Act of 1989, the appeal deserves to be dismissed.

10. Having heard the learned Counsel for the appellant, learned APP for the State and learned Counsel for the respondent No.2. Perused the investigation papers as well as the impugned order. From the recitals of the FIR, it reveals that the specific statement which attributed to the present appellant is that, “मांगटे हो

तुम्ही लय माजले तुम्हाले हिसका दाखवा लागते”. The statements of the relevant witnesses were also recorded. The Caste Certificate of the informant is also collected. From the Caste Certificate, it shows that the informant belongs to the “Mang” community. The statements which are recorded during the investigation also substantiated the said contention that the present appellant has abused by referring the caste of the informant. Thus, *prima facie* case reveals from the various statements of the witnesses and the statement of the informant.

11. As far as Bar under Section 18A of the Act of 1989 is concerned, the issue is dealt by the Full Bench of the Rajasthan High Court in ***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 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 or whether there is any preponderance of probability of commission of such an offence. Such an exercise is intended to put a complete bar against entertainment of application of anticipatory bail which is unambiguously laid down under Section 18 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 there from taken at their face value disclosed the existence of the ingredients constituting the alleged offence.

This aspect is also dealt by this Court in the cases of *Ratnakala Martandrao Mohite Vs. The State of Maharashtra and Anr.*, reported in *2020 ALL MR (Cri) 334*, *Navnath S/o Dalsing Rathod @ Aade and Ors. Vs. State of Maharashtra and Anr.* in *Criminal Appeal No.968 of 2018* decided on 25.04.2019 and *Jagdish Sajjankumar Banka Vs. State of Maharashtra and anr.*, reported in *2023 SCC OnLine Bom 581*. The Hon'ble Apex Court in the case of

Vilas Pandurang Pawar and Anr. Vs. State of Maharashtra and Ors., reported in ***2012 ALL MR (Cri) 3743***, also held that no Court shall entertain application for anticipatory bail in the offence registered under the provisions of the Act of 1989, unless it *prima facie* finds that such an offence is made out. Similar principles also laid down by this Court. In such circumstances, it is evidence that in spite of bar under Section 18 for involving the powers under Section 438 of the Cr.P.C., it is still open to this Court to find out by looking into FIR as to whether *prima facie* case is made out by the complainant against the appellant. Thus the application under Section 438 of the Cr.P.C. needs to be considered for ascertaining whether there is material to make out a *prima facie* case for offences punishable under the Act of 1989.

12. In the background of the above well settled legal position, if the facts of the present case are taken into consideration, the recitals of the FIR wherein specifically alleged that the present appellant has abused not only by referring the caste, but she was abused on the caste. It is well settled that the basic ingredients of Section 3(1)(r)(s) of the Act of 1989 are that there must be “intentional insult” with intent to humiliate a member of the Scheduled Caste or a Scheduled Tribe in any place within the public

view. Admittedly, no direct evidence would be available to gather the intention of the person, the intention can be gathered from the surrounding circumstances. The circumstance that the present appellant along with the other family members entered into the courtyard of the house of the informant and not only referred the caste but she was abused by on her caste is sufficient to show that *prima facie* case is made out against the present appellant. The allegations against the present appellant is that he abused the informant on her caste.

This aspect is also considered by the Hon'ble Apex Court in the case of ***Prathvi Raj Chauhan Vs. Union of India & Ors.***, reported in ***(2020)4 SCC 727***, wherein the Hon'ble Apex Court held that grant of anticipatory bail under Section 438 of the Cr.P.C. barred in respect of offences under the Act of 1989. However where *prima facie* case not made out, anticipatory bail can be granted in appropriate circumstances, with a cautious exercise of powers. However, for evaluating *prima facie* case, reappreciation of evidence is not required, the powers are to be exercised cautiously. The clear intention of the Parliament in inserting Section 18A into the Act of 1989 was undo the effect of the declaration issued by the Hon'ble Apex Court in the case of ***Dr. Subhash Kashinath Mahajan Vs. The State of Maharashtra & Anr.***, reported in ***(2018) 6 SCC 454***, is also

dealt in the above judgment. The provision of the amendment expressly override the directions in ***Subhash Kashinath Mahajan*** (supra), that a preliminary inquiry within seven days by the Deputy Superintendent of Police concerned, to find out whether the allegations make out a case under the Act, and that arrest in appropriate cases may be made only after approval by the Senior Superintendent of Police. The Parliamentary intent was to allay the concern that this would delay registration of the First Information Report (FIR) and would impede strict enforcement of the provision of the Act. While dealing with the provisions of Section 18A, the Hon'ble Apex Court held that there has been a failure on the part of the authorities concerned in complying with the provisions of the Act and Rules. The object with which the Act has been made is defeated by the indifferent attitudes of the authorities. It is true that the State Governments are responsible for carrying out the provisions of the Act as contended by the counsel for the Union of India. At the same time compliance with the provisions of the Act of 1989 should be insured and with this the Hon'ble Apex Court held that it is not disputed at the Bar that the provisions in Section 18A in the Act of 1989 had been enacted because of the judgment passed by this Court in ***Subhash Kashinath Mahajan*** (supra), mainly because of directions 79.3 to 79.5, review petition is allowed and the directions 79.3

to 79.5 have been recalled. Thus, in view of the judgment passed in the review petition the matter is rendered of academic importance as we had restored the position as prevailed by various judgments and that were in vogue before the matter of ***Subhash Kashinath Mahajan*** (*supra*) was decided.

13. Thus, the Hon'ble Apex Court after considering the settled law, it is held that admittedly grant of anticipatory bail under Section 438 of the Cr.P.C. is barred in respect of offence under the Act of 1989. However, *prima facie* case is not made out, anticipatory bail can be granted but while exercising the powers caution is to be exercised.

14. In the light of the above well settled legal provisions, if the facts of the present case are taken into consideration, the circumstances which are brought on record shows that there was a previous dispute between parties, present appellant along with the other family members came in front of house of informant not only referred the caste of the informant but also abused her on her caste is sufficient to attract the bar under Section 18A of the Act of 1989. The learned trial Court has rightly considered the same and rightly rejected the application. I do not find any reason to interfere with

the order of the trial Court. In view of above, the appeal is devoid of merits and liable to be dismissed. Accordingly, the Appeal is **dismissed**.

Fees of the appointed counsel for respondent No.2 be quantified as per rule.

(URMILA JOSHI-PHALKE, J.)

Kirtak