



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

CRIMINAL APPEAL NO.263 OF 2024

1. Aslam s/o Rehman Gawli
Age 29 years, Occupation – Business,
R/o. Gawlipura, Ward No.2,
Behind Maritmara Chowk,
Madipeth, Mehkar,
District Buldana
2. Javed s/o Rehman Gawli
Age – 31 years, Occupation – Business,
R/o. Gawlipura, Ward No.2,
Behind Maritmara Chowk,
Madipeth, Mehkar,
District Buldana
3. Firoz s/o Rehman Gawli
Age – 27 years, Occupation – Business,
R/o. Gawlipura, Ward No.2,
Behind Maritmara Chowk,
Madipeth, Mehkar,
District Buldana

...APPELLANTS

VERSUS

1. State of Maharashtra,
through PSO Mehkar,
P.S. Mehkar, District Buldana
2. Smt. Surekha Laxman Gaikwad
Age 38 years, Occupation – Housewife,
R/o. Behind Civil Court, Ward No.03,
Mehkar, District Buldana

...RESPONDENTS

Mr. A.M. Jaltare, Advocate for the appellants.
Mr. N.B. Jawade, APP for the State.
Mr. J.B. Gandhi, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : JULY 8, 2024.

ORAL JUDGMENT :

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

2. This is an appeal under Section 14A 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 15/04/2024 whereby the Special Judge, Mehkar, District Buldhana rejected the anticipatory bail application of the appellants bearing Criminal ABA No.68/2024.

3. The appellants are apprehending the arrest at the hands of police in connection with Crime No.189/2024 registered with police station Mehkar, District Buldhana for the offences punishable under Sections 354-A, 354-B, 324, 509, 323, 504, 506, 353, 394 read with Section 34 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(1)(u), 3(1)(w)(i), 3(1)(w)(ii), 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. Learned Counsel for the appellants submitted that the appellants are apprehending the arrest at the hands of police as the FIR

is lodged against them to give counter blast of the FIR filed by appellant No.1. He submitted that on 21/03/2024 at about 10:30 a.m. the appellants were cleaning the plot which is in their possession situated at Ward No.8, Annabhau Sathe Nagar, at the relevant time there was a dispute between him and one Surekha Laxman Gaikwad. It is alleged that in the said incident, one Sagar has outraged the modesty of the wife of appellant No.1 and also assaulted him. On the basis of said report, police have registered the crime against the informant and other relatives vide Crime No.188/2024 and to give counterblast to the said FIR subsequently the Crime No.189/2024 is registered. He submitted that as far as the allegation of the assault and outraging of the modesty is concerned which are false one. He further invited my attention towards the recitals of the FIR and submitted that mere reference of the caste is not sufficient to attract the provisions of the Atrocities Act. There is no statement to the effect that the present appellants were having knowledge that she belongs to the scheduled caste, and therefore, with intent to insult or humiliate her they have outraged the modesty. Thus, in absence of the said statement the provisions of the Atrocities Act are not applicable. He further submitted that the earlier FIR shows that the subsequent FIR lodged by the informant is only to give counterblast to the FIR of the present appellants. As far as the custodial interrogation is concerned, which is not required as the present appellants have already

cooperated with the investigating agency. In view of that, the interim protection granted to the present appellants deserves to be confirmed.

5. Learned APP strongly opposed the said appeal on the ground that two cross-complaints are filed against each other with the similar allegations. He further submitted that there is a previous dispute between the parties. He submitted that as far as the allegations regarding the outraging of the modesty is concerned supported by the medical certificate as injuries are found on the person of the victim. The brother of the informant has also sustained the injuries in the said incident. Thus, considering the nature that the present appellants have outraged the modesty of the victim which is grievous in nature and supported by the statements of the witnesses, the appeal deserves to be dismissed.

6. Learned Counsel for the complainant has also endorsed the same contentions and submitted that considering that all the appellants have outraged the modesty of the victim who belongs to the scheduled caste sufficiently shows the involvement of the present appellants in the alleged offence, there is a bar under Section 18 and in view of that the appeal deserves to be dismissed.

7. I have heard learned Counsel for both the parties. There is no dispute as to the fact that two counter FIR's are filed against each other with the similar allegations. In both the FIR's against each other the allegation of outraging the modesty of the female members is levelled. As far as Crime No.189/2024 is concerned which is registered against the present appellants. It is alleged that the present appellants have outraged the modesty of the victim by touching to her breasts and also abused her on her caste. Admittedly, there is no statement that the present appellants were aware that she belongs to the scheduled caste and thereafter with intent to insult and humiliate her they have outraged the modesty. As far as the allegation of outraging of the modesty is concerned which is general in nature against all the appellants. The injury certificate which is on record shows that there is one abrasion on the person of the victim that is also on right leg, buttocks and right arm. There is no abrasion on her chest. There is a superficial incision on left lower and upper back and blunt trauma on abdomen, therefore, as far as the allegation of outraging of her modesty by all the three appellants is concerned and there is no injury or any trauma found during her medical examination.

8. After considering the allegations against the present appellants that they have referred by her caste is not sufficient to attract the provisions of the Scheduled Caste and Scheduled Tribe Act. As far as

the bar under Section 18 or 18A of the Atrocities Act is concerned, the Hon'ble Apex Court in the case of ***Vilas Pandurang Pawar and anr. Vs. State of Maharashtra and ors. [2012 ALL MR (Cri.) 3743 (S.C.)]*** has dealt with this issue and observed 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 the catena of decision. In the case of *Vilas Pandurang Pawar* (supra) wherein the Hon'ble Apex Court has reiterated the principles and observed that no Court shall entertain the application for anticipatory bail in the offence unless it *prima facie* finds that such an offence is made out. After perusal of the FIR lodged against the present appellants *prima facie* reveals that the allegation against the present appellants that they outraged the modesty of the victim by touching to her chest is general allegation. The basic ingredient of Section 3(1)(r)(s) is that there must be "intentional insults" with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view. Mere reference of the caste is not sufficient to say that it was referred to insult or humiliate the said person. There should be an intention to humiliate such person which should be reflected from the recitals of the FIR. Considering the allegations made against the present appellants, the

appeal deserves to be allowed. In view of that, I proceed to pass the following order :

- (i) The appeal is allowed.
- (ii) The order passed by the Special Judge, Mehkar, District Buldhana in Criminal ABA No.68/2024 dated 15/04/2024 is hereby quashed and set aside.
- (iii) In the event of the arrest, the appellants – 1) Aslam s/o Rehman Gawli, 2) Javed s/o Rehman Gawli, 3) Firoz s/o Rehman Gawli in connection with Crime No.189/2024 registered with police station Mehkar, District Buldhana for the offences punishable under Sections 354-A, 354-B, 324, 509, 323, 504, 506, 353, 394 read with Section 34 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(1)(u), 3(1)(w)(i), 3(1)(w)(ii), 3(2)(va) of the Scheduled Caste and Scheduled Tribes (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) each with one surety each, in the like amount.
- (iv) The appellants shall attend the concerned police station as and when required for the investigation purpose,

till filing of the charge-sheet and shall cooperate with the investigating agency.

(v) The appellants shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

9. The appeal is disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*