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

CRIMINAL APPEAL NO.347 2023

Godawari w/o Gajanan Nagrik,
Aged about : 29 Years,
Occupation : Agriculturist,
R/o Moli, Taluka Mehkar,
District Buldhana.

.... APPELLANT

// VERSUS //

1. State of Maharashtra,
Through Police Station,
Janefal, Taluka Mehkar,
District Buldhana.
2. Raju s/o Ashok Wankhede,
Aged about : 29 Years,
Occupation : Agriculturist,
R/o Moli, Taluka Mehkar,
District Buldhana.

.... RESPONDENTS

Mr. A. J. Bhoot, Advocate for appellant.
Mr. M. J. Khan, APP for respondent No.1/State.
Mr. N. D. Dawda, appointed Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 06.03.2024

ORAL JUDGMENT :

1. Heard.
2. **Admit.**
3. By preferring this appeal, the appellant has challenged
the order dated 10.02.2023 passed by the learned Special Judge

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Mehkar, District Buldhana in Criminal Bail Application No.298/2022, by which anticipatory bail of the present appellant is rejected.

4. The appellant is prosecuted for the offences punishable under Sections 143, 147, 148, 324, 504 and 506 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(1)(u) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act of 1989') and under Section 135 of the Maharashtra Police Act.

5. The crime is registered on the basis of report lodged by Raju Ashok Wankhade alleging that on 26.08.2022 at about 4.30 p.m. he along with his uncle was proceeding along with their bullocks. At that time, present appellant along with the co-accused came there and there was hot exchange of words between them. He as well as his uncle were assaulted by the present appellant and another co-accused. As far as the present appellant is concerned, it is alleged that she has assaulted him by means of slaps. On the basis of said report, police have registered the crime.

6. After registration of the crime, the appellant filed an application for grant of bail in the event of the arrest before the learned Special Court. The learned Special Court has rejected the application by observing that bar under Section 18-A of the Act of

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1989, is attracted and being aggrieved with the same, present appeal is preferred by the appellant.

7. Heard learned Counsel Mr. Bhoot for the appellant, learned APP for the State and learned Counsel for the informant. He submitted that as far as the present appellant is concerned, only allegation against her is that she assaulted the informant by means of slaps. He submitted that as far as the bar under Section 18-A of the Act of 1989 is concerned, there is no allegation that either she has abused the informant or his uncle on his caste. Thus, considering the allegation against her, the bar under Section 18-A of the Act of 1989 is not attracted and therefore, the order passed by the learned Special Court is erroneous and liable to be set aside.

8. Learned APP strongly opposed the appeal as well as the learned Counsel for the respondent No.2 - informant has also opposed the appeal on the ground that *prima facie* case is made out against the present appellant. As she was involved in the crime and specific allegation is made against her that she assaulted the informant as well as his uncle. He submitted that bar under Section 18-A of the Act of 1989 is attracted and therefore, learned Special Court has rightly considered that there is a bar under Section 18-A of the Act of 1989 and rejected the application, therefore, no interference is called for.

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9. After hearing the learned Counsel for the appellant, learned Counsel for the respondent No.2 and learned APP for the State, perused the investigation papers as well as the recitals of the FIR. After considering the recitals of the FIR and the investigation papers, it seems that the only allegation against the present appellant is that she assaulted the informant by means of slaps. There is no whisper that either present appellant has abused the informant on his caste or there are any other abuses by the present appellant. As far as the bar is concerned under Section 18-A of the Act of 1989, now it is well settled that where *prima facie* case is not made out anticipatory bail can be entertained. 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.PC. 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.

10. Considering the observation of the Hon'ble Apex Court and the recitals of the FIR and the investigation papers, bar is not attracted in the present case to entertain the application of the present appellant. The similarly situated accused is already released

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on bail by this Court by holding that the bar under Section 18 of the Atrocities Act could not come in the way of the appellant.

11. In the above referred backdrop, though the learned APP and the learned Counsel for the respondent No.2 opposed the application, the appeal of the present appellant deserves to be allowed by setting aside the order passed by the learned Special Judge. In view of that, I pass following order.

ORDER

(i) The appeal is allowed.

(ii) The order dated 10.02.2023 passed by the learned Special Judge, Mehkar, District Buldhana is hereby quashed and set aside.

(iii) The appellant **Godawari w/o Gajanan Nagrik** be released on anticipatory bail in the event of her arrest in connection with Crime No.250/2022 for the offences punishable under Sections 143, 147, 148, 324, 504 and 506 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(1)(u) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 135 of the Maharashtra Police Act, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iv) The appellant shall remain present before the Investigating Officer as and when required for the investigation purpose.

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

(vi) The fees of the appointed Counsel for the respondent No.2 be quantified as per the rules.

The criminal appeal is disposed of.

(URMIL A JOSHI-PHALKE, J.)