



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

CRIMINAL APPEAL NO.483 of 2024

(Uddhav s/o Laxman Nagrik and others Vs. State of Maharashtra thr. PSO PS Janefal,
Tq. Mehkar, Dist. Buldhana and another)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. A. J. Bhoot, Advocate for Appellants.
Mr. S. C. Joshi, APP for Respondent No.1/State.
Ms. S. Phaltankar, Advocate for Respondent No.2.

CORAM: URMILA JOSHI PHALKE, J.

DATE: 5th SEPTEMBER, 2024.

1. Heard.

2. **Admit.**

3. By preferring this appeal, the appellants have challenged the order dated 23.12.2022 passed by the learned Special Judge Mehkar, District Buldhana in Criminal Bail Application No.289/2022, by which anticipatory bail application of the present appellants are rejected.

4. The appellants are 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 the report lodged by Raju Ashok Wankhade alleging that on 26.08.2022 at about 04:30 p.m. he along with his uncle was proceeding along with their bullocks. At the relevant time, present appellants along with the other co-accused came there and there was altercation of the words and during altercation of the words, he as well as his uncle were assaulted by the present appellants and the other co-accused. It is further alleged that he and his uncle there also abused on their caste by the present appellant and the other co-accused. On the basis of the said report, police have registered the crime.

6. After registration of the crime, the appellants filed an application for grant of bail in the event of their arrest before the learned Special Court. The learned Special Court have rejected the application by observing that there is a bar under Section 18-A of the Act of 1989, and therefore, the application rightly rejected by the Special Court and no interference is called for.

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 appellants are concerned there is no allegation that either they have abused the informant on their caste. Only allegation is that they have assaulted the informant by

means of slaps. As far as the bar under Section 18-A of the Act of 1989 is concerned, there is no allegation that either they have assaulted the informant or his uncle on his caste and therefore, the provisions of the Atrocities Act are not applicable against them, and therefore, bar under Section 18-A of the Act of 1989 is not attracted. Therefore, the order passed by the learned Special Court deserves to be set aside.

8. Learned APP and the learned counsel for the complainant strongly opposed the said application on the ground that the present appellants and the other co-accused in furtherance of their common object abused the informant and his uncle and assaulted him. Considering the informant in the actual assault and bar under Section 18-A of the Act of 1989, the learned Special Judge has rightly considered and rejected the application, therefore, no interference is called for.

9. After hearing the learned counsel for the appellants, learned counsel for respondent nos.1 and 2, 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 only allegation against the present appellants that they have assaulted by means of slaps. As far as the bar under Section 18-A of the Act of 1989, is concerned there is no allegation that the present appellants have abused the informant on his caste or there is no whisper that what type of the abuses were used by the

present appellants. Thus, as far as the bar under Section 18-A is concerned which is not attracted and no *prima facie* case is made out against the present appellants. The Hon'ble Apex Court in the case of ***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 the offences under the 1989 Act. However, where *prima facie* case is not made out anticipatory bail can be granted in appropriate circumstances, with a cautious exercise of the 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 appeal of the present appellants. The similarly situated accused is already released on bail by this Court by holding that the bar under Section 18-A of the Atrocities Act could not come in the way of the appellants.

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

ORDER

- i] The appeal is allowed.

- ii] The order dated 23.12.2022 passed by the learned Special Judge, Mehkar, District Buldhana is quashed and set aside.
- iii] The appellant no.1 – Uddhav s/o Laxman Nagrik, appellant no.2 – Ganesh s/o Punjaji Nagrik and applicant no.3 – Suman w/o Ganesh Nagrik shall be released on anticipatory bail in the event of their 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/- each with one solvent surety in the like amount.
- iv] The appellants shall remain present before the Investigating Officer as and when required for the investigation purpose and shall co-operate with the Investigating Agency.
- v] The appellants shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

vi] The fees of the appointed counsel be quantified as per the rules.

12. The appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)

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