



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

CRIMINAL APPEAL NO.358 OF 2023

Shubham Sunil Sapkal,
Aged about 26 Years,
Occupation Labour and Education,
R/o Rathi Plots, Gorakshan Road,
Khamgaon, Taluka Khamgaon,
District Buldhana.

..... APPELLANT

// VERSUS //

1) State of Maharashtra,
Through Police Station Officer,
Shivaji Nagar, Taluka Khamgaon,
District Buldhana.

2) Vanshika Vishnu Shegokar,
Aged about 20 Years,
R/o Sant Vihar Nagar, Khamgaon,
Shivaji Nagar, Buldhana.

.... RESPONDENTS

Ms. Punam Pirsude, Advocate h/f Mr. S. V. Sirpurkar, Advocate
for appellant.

Mr. S. S. Hulke, APP for respondent No.1/State.

Ms. Kirti Deshpande, appointed Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 29.02.2024

ORAL JUDGMENT :

1. Heard.

2. **Admit.**

3. By preferring the appeal, the appellant has challenged the
order passed by the Special Judge in Criminal Bail Application

No.116/2023 dated 02.05.2023 by which the application for anticipatory bail of the present appellant is rejected.

4. The accusation against the present appellant is on the basis of report lodged by the victim on an allegation that she is residing along with her parents and taking education in B.Sc. final. On 03.04.2023 when she was proceeding to attend the class, at that time, the present appellant restrained her and hold her hands and outraged her modesty. On the basis of the said report, police have registered the crime against the present appellant for the offence punishable under Sections 354, 354-D of the Indian Penal Code and under Sections 3(1)(w)(i) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act of 1989').

5. Learned Counsel for the appellant submitted that the trial Court has not considered that the offences punishable under Sections 354-A and 354-D are bailable offences. As far as the application of the Atrocities Act is concerned, the provisions are not applicable merely because the victim belongs to the Scheduled Caste. There is no allegation in the FIR that the appellant is aware about the fact that she belongs to the Scheduled Caste and thereafter with intent to humiliate or insult her, he hold her hands. As far as the custodial interrogation is concerned, which is not required, as nothing is to be recovered from the present appellant. She further submitted that the previous dispute was

pending between the family members of the victim and the present appellant. The settlement talks were going on and therefore, the appellant was released on bail in earlier offence, but this false FIR is lodged with the false allegations. She submitted that bar under Section 18-A is not attracted as *prima facie* case is not made out against the present appellant.

6. Learned APP strongly opposed the appeal on the ground that the victim belongs to the Schedule Caste. The appellant is aware about the said fact and intentionally, he humiliated and insulted the victim within the public view. Therefore, bar under Section 18-A is attracted and the application for the anticipatory bail is not maintainable. Learned trial court has rightly considered the same and rightly rejected the application. In view of bar under Section 18-A of the Act of 1989, the present appeal is devoid of merits and liable to be dismissed.

7. After hearing the learned Counsel for the appellant, learned APP for the State and learned Counsel for the respondent No.2, perused the recitals of the FIR as well as the investigation papers. The learned trial Court has rejected the application merely on the ground that the bar under Section 18-A of the Act of 1989, is attracted. There is no dispute as to the fact that the offences alleged under Section 354-A and 354-D are bailable offences. As far as the applicability of the provisions of the Act of 1989 are concerned, admittedly, the victim nowhere stated

that the appellant is knowing that she belongs to the Scheduled Caste or Schedule Tribe. Now, it is well settled that bar under Section 18-A of the Act of 1989 is attracted when the *prima facie* case is made out, where there is no *prima facie* case anticipatory bail can be granted in appropriate circumstances with cautious exercise of powers. On perusal of the recitals of the FIR and the entire investigation papers, it reveals that there is a previous dispute pending between the present appellant and the family members of the victim. Initially also, the crimes are registered against the present appellant, on the basis of report lodged by the family members of the victim. It also reveals that during the pendency of the earlier bail application, the settlement talks were in progress and therefore, the appellant was released on bail and subsequently, this FIR is lodged. Even accepting the contents of FIR as it is, it only shows that the appellant has held her hands. No overt act is attributed to the present appellant, as far as the allegation of outraging the modesty is concerned.

8. As far as the bar under Section of 18-A of the Act of 1989, is concerned, the Full Bench of the Rajasthan High Court has dealt with this issue in the case of **Virendra Singh Vs. State of Rajasthan** reported in **2000 CRI.L.J. 2899**, and it is held that 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.

9. This issue is also dealt by this Court in various judgments including in **Ratnakala Martandrao Mohite Vs. The State of Maharashtra and another** reported in **2020 ALL MR (Cri.) 334**, **Navnath s/o Dalsing Rathod @ Aade and others Vs. State of Maharashtra Through Police Inspector Karmad Police Station, Aurangabad and another decided on 25.04.2019 in Criminal Appeal No.968/2018** and **Jagdish Sajjankumar Banka Vs. State of Maharashtra and others** reported in **2023 ALL MR (Cri.) 2911**, wherein by referring the judgment of the Full Bench of the Rajasthan High Court, it is held that the issue of applicability of Section 18 of the Act elaborately and the provisions of Section 18 as well as newly amended Section 18-A of the Act of 1989 create a bar for exercising jurisdiction under Section 438 of the Cr.P.C. However, it would not preclude the concerned Court from examination of

allegations made in the FIR on its face value to determine whether prima facie case is made out or not?

10. In **Vilas Pandurang Pawar and another Vs. State of Maharashtra and others** reported in **2012 ALL MR (Cri.) 3743 (S.C.)**, wherein the Hon'ble Apex Court held that no Court shall entertain application for anticipatory bail in the offence registered under the provisions of Act 1989, unless it prima facie finds that such an offence is made out.

11. Thus, while considering the anticipatory bail application Court has to consider whether there is a *prima facie* case is made or not and if *prima facie* case is made out, the bar under Section 18-A of the Act of 1989, is attracted.

12. By applying this principle in the present case, considering the allegations the application for grant of anticipatory bail is maintainable. Admittedly, the custodial interrogation of the present appellant is not required. As far as the various FIRs which are registered against the present appellant, if taken into consideration, some conditions require to be imposed on the present appellant. The learned trial Court has not considered these aspects, therefore, the order passed by the learned Special Court deserves to be quashed and set aside. In view of that, I proceed to pass following order.

ORDER

- (i) The appeal is allowed.
- (ii) The order dated 02.05.2023 passed by the learned Special Court in Criminal Bail Application No.116/2023 is quashed and set aside.
- (iii) The appellant **Shubham Sunil Sapkal** be released on anticipatory bail in the event of his arrest in connection with Crime No.96/2023 registered with Police Station, Shivaji Nagar, Khamgaon District Buldhana, for the offences punishable under Sections 354 and 354-D of the Indian Penal Code and under Sections 3(1)(w)(i) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (iv) The appellant shall not enter into the vicinity of Sant Vihar Nagar, Khamgaon, till the culmination of the trial.
- (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 imposed would need to the cancellation of the bail.

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

(URMIL A JOSHI-PHALKE, J.)