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

CRIMINAL APPEAL NO.278 OF 2024

1. Pralhad Dayaram Dhore,
Aged about 54 Years,
Occupation : Agriculturist.
2. Rushikesh Pralhad Dhore,
Aged about 25 Years,
Occupation : Education,
Both are R/o Shivapur,
Taluka and District Akola.

..... APPELLANTS

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Khadan, Akola,
Police Station, Khadan Akola.
2. Mangesh Waman Damodhar,
Age – 32 Years,
R/o. Shiopur,
Tahsil and District – Akola.

.... (Complainant)

.... RESPONDENTS

Mr. Firdos Mirza, Senior Counsel a/b Mr. Z. Z. Haq
Counsel for the appellants.
Mr. U. R. Phasate, APP for the respondent No.1/State.
Ms. C. S. Bhute, appointed Counsel for the respondent
No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 21.08.2024

ORAL JUDGMENT :

1. Heard.
2. **Admit.**

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3. The appellant has challenged the order dated 02.05.2024 passed by the learned Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act rejecting the bail application of the present appellants. The present appeal is filed under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act of 1989').

4. The appellants are apprehending the arrest at the hands of police as crime is registered against them on the basis of report lodged by Mangesh Waman Damodhar vide Crime No.302/2024. In the said report, it is alleged that there was a previous dispute between the informant and the family members of the appellants. On 18.03.2024 at about 4.00 p.m. he had been to the house of Pralhad Dhore. At the relevant time, he was assaulted by both the appellants by means of iron pipe as well as by giving slaps to him. Due to the assault, he sustained grievous injuries and he was admitted to the hospital and he undergone surgery. On the basis of the said report, police have registered the crime against the present appellants.

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5. Learned Senior Counsel for the appellants submitted that the falsity of the incident appears from the documents which are collected during the investigation. He invited my attention towards the report submitted by the investigating agency before the Court which shows that the informant has received the injuries in an incident dated 15.03.2024. He also pointed out that on 15.03.2024 one another FIR was registered against the informant which shows that he received the injuries on 15.03.2024. Thus, he submitted that as far as the injuries on 18.03.2024 are concerned, the contradictory evidence was collected by the investigating agency as far as the application of provisions of the Act of 1989 are concerned, there is no allegation that either present appellants have abused the informant on his caste. There is no statement that though present appellants were knowing that the informant belongs to the Scheduled Castes or Scheduled Tribes, he was assaulted. Thus, he submitted that bar under Section 18 of the Act of 1989 will not attract in the present case, in view of that, the appellants be protected by granting anticipatory bail.

6. Learned APP for the State and learned appointed Counsel for the respondent No.2 strongly opposed the

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appeal on the ground that sufficient evidence is collected during the investigation by the Investigating Officer shows that the informant was assaulted by the present appellants. The informant belongs to the Scheduled Castes or Scheduled Tribes and knowingly he was assaulted therefore, bar under Section 18 of the Act of 1989 is attracted, in view of that the appeal deserves to be dismissed.

7. After hearing the learned Counsel for the appellants and learned APP for the State and learned appointed Counsel for the respondent No.2, perused the entire investigation papers, from which it appears that prior to this incident on 15.03.2024 the informant was admitted in the hospital and he was treated in the hospital. The report filed by the investigating agency also shows that he received the injuries on 15.03.2024. Thus, the submission of the learned Senior Counsel for the appellants that if he was admitted in the hospital on 15.03.2024, there is no material to show that he was discharged from the hospital. His presence at the house of the present appellants is doubtful. He submitted that the entire documents collected during the investigation shows his admission on 15.03.2024 itself. Thus, considering the statements recorded during the

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investigation which alleges that the informant was assaulted by the present appellants is contradicted by the medical certificate. The presence of the informant at the house of the present appellants itself is doubtful, if he was admitted in the hospital. Thus, considering the contradictory statement, there is substance in the submission made by the learned Senior Counsel for the appellants and the prosecution case becomes doubtful. It is well settled that when *prima facie* case is not made out, the bar under Section 18 of the Act of 1989 will not attract. Considering the same, the bar under Section 18 of the Act of 1989 will not attract in the present case, the appellants have made out a case for grant of anticipatory bail. At the same time, the submissions made by the learned APP requires some consideration that the incriminating weapons are yet to be required, in view of that, some conditions requires to be imposed on the present appellants. Accordingly, I proceed to pass following order:

ORDER

- (i) The appeal is allowed.
- (ii) The order passed by the learned Special Court dated 02.05.2024 rejecting the bail application in

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Misc. Criminal Application No.206/2024, is hereby quashed and set aside.

(iii) The appellant **No.1 Pralhad Dayaram Dhore and No2. Rushikesh Pralhad Dhore** shall be released on anticipatory bail in the event of arrest, in connection with Crime No.302/2024 registered with Police Station Khadan, District Akola for the offences punishable under Sections 323, 325, 365, 504 and 506 read with Section 34 of the Indian Penal Code and under Sections 3(2)(va), 3(1)(r), 3(1)(s) and 3(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, on executing PR Bond in the sum of Rs.25,000/- each with one solvent surety of the like amount.

(iv) The appellants shall produce the iron pipes which are used in the commission of crime before the Investigating Officer and the said period will be considered as their custody for the purpose of Section 27 of the Indian Evidence Act.

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

(vi) The appellants shall attend the proceeding before the learned Special Court without seeking any exemption unless there are exceptional circumstances.

(vii) The trial Court shall not be influenced by the condition imposed on the appellants regarding production of the incriminating weapons before the Investigating Officer.

8. The fees of the appointed Counsel be quantified as per rules.

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9. The appeal is disposed of

(URMILA JOSHI-PHALKE, J.)

Sarkate.