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

CRIMINAL APPEAL NO.361 OF 2024

1. Vinod Sonaji Khandarkar,
Aged about 42 Years,
Occupation : Service,
R/o: Near Bus Stop, Behind Gajanan
Maharaj Temple, Malkapur, Akola. **APPELLANT**

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Police Station, Khadan,
District Akola.
2. Sharad s/o Gautam Wankhede,
Aged about: 34 Years,
Occupation: Labour,
R/o: Juni Basti, Malkapur, Akola. **RESPONDENTS**

Mr. J. M. Gandhi, Counsel for the appellant.
Mr. U. R. Phasate, APP for the respondent No.1/State.
Mr. Sukrut S. Sohoni, Counsel for the respondent No.2.

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

ORAL JUDGMENT :

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

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in Criminal Application No.289/2024 by which the application of the present appellant for grant of anticipatory bail is rejected in connection with Crime No.439/2024 registered under Sections 307, 323, 324, 325, 326, 504 read with Section 34 of the Indian Penal Code and Section 3(1)(r), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act of 1989').

4. The crime is registered on the basis of report lodged by Sharad Gautam Wankhede on an allegation on 17.05.2024 at about 9.30 p.m. to 10.00 p.m., he and his friend were chit-chatting at Malkapur Square, Akola, at the relevant time, the injured went behind the Malkapur bus stop for easing himself, at the relevant time, present appellant and other co-accused assaulted him initially by fist and kick blows and thereafter, present appellant handed over the spanner to the co-accused and co-accused has given a blow by the spanner on the injured, due to which injured has sustained the injuries. On basis of the said report, police have registered the crime against the present appellant.

5. Learned Counsel Mr. Gandhi for the appellant submitted that the wife of the one of the co-accused has lodged report against the informant and other family members, as they have outraged the modesty and therefore, this false FIR is lodged to give counterblast to the complaint of the wife of the co-accused. He further

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submitted that as far as the application of the provisions of the Atrocities Act are concerned, which are not applicable as there is no allegation that the present appellant has abused him on his caste. He submitted that there is no statement that knowing the informant belongs to the Scheduled Caste and Scheduled Tribes, he was abused and assaulted by the present appellant. He submitted that as far as the custodial interrogation is concerned, which is not required as weapon is used by the other co-accused and nothing is to be seized from the present appellant. He further submitted that bar under Section 18 of the Act of 1989 is also not attracted. In view of that, the interim protection granted to the present appellant deserves to be confirmed.

6. Learned APP for the State and learned Counsel for the respondent No.2 strongly opposed the appeal and submitted that at the initiation of the present appellant, the entire incident occurred. The present appellant has played a vital role by handing over the spanner in the hands of the other co-accused and thereafter other co-accused has dealt a blow on the head of the injured. The injured has sustained the grievous injury. He has undergone the surgery for the said injury. Considering the gravity of the offence, the appeal deserves to be dismissed.

7. After hearing the learned Counsel for the appellant and learned APP for the State, perused the recitals of the FIR from

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which it reveals that the allegation against the present appellant is that he has handed over the spanner to the other co-accused and other co-accused has given a blow by the said spanner. However, the statement of the informant which is recorded under Section 164 of the Code of Criminal Procedure is contradictory, in which before the Magistrate he stated that the co-accused has taken the spanner from the hands of the present appellant and thereafter given a blow. If the second statement is considered, then the allegation of the prosecution that entire incident occurred at the behest of the present appellant appears to be doubtful. As far as the bar under Section 18 of the Act of 1989 is concerned, it is settled law that when *prima facie* case is not made out the bar will not attract.

8. Considering the role of the present appellant which allegedly to the extent that the other co-accused has obtained the spanner from his hand and given a blow, the custodial interrogation of the present appellant is not required, the bar under Section 18 of the Act of 1989 is also not attracted. In view of that the ad-interim protection granted to the present appellant deserves to be confirmed. Accordingly, I proceed to pass following order:

ORDER

- (i) The appeal is allowed.
- (ii) The order dated 03.06.2024 passed by the learned Special Court in Criminal Application (B.A.)

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No.289/2024 rejecting the bail application is quashed and set aside.

(iii) In the event of arrest, in connection with Crime No.439/2024 registered under Sections 307, 323, 324, 325, 326 and 504 read with Section 34 of the Indian Penal Code and Sections 3(1)(r), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellant **Vinod Sonaji Khandarkar** shall be released on anticipatory bail, on executing PR Bond in the sum of Rs.25,000/- with one solvent surety of the like amount.

(iv) The appellant shall attend the concerned Police Station once in a week on Sunday between 10.00 a.m. to 1.00 p.m. and shall cooperate with the investigating agency.

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

(vi) On failure to attend the Police Station as directed by this Court would lead to cancellation of the bail.

9. The appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)