



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

CRIMINAL APPEAL NO. 395 OF 2024

APPELLANTS:

1. Vijay s/o Gowardhan Patkar,
Age-58 years, Occu: Retired.
2. Varsha w/o Vijay Patkar,
Age-52 years, Occu: Household,
Both r/o Mahsul colony, near Ambedkar
Nagar, Akola, Tq. and District Akola.

...VERSUS...

RESPONDENTS

1. State of Maharashtra,
through Police Station Officer,
Police Station Civil Lines,
Akola, District Akola.
2. XYZ.
Victim in Crime No. 800/2021,
lodged with Police Station Civil Lines,
Akola District Akola.

Mr. Sumit B Gandhe, counsel for the appellants.

Mr. K.R. Lule, APP for respondent/State.

Ms. Radha Mishra, counsel (appointed) for respondent No.2

CORAM : URMILA JOSHI-PHALKE, J.

DATE : 30/09/2024

ORAL JUDGMENT :

1. **Admit.** Heard finally with the consent of learned
counsel appearing for the parties.

2. By this appeal, the appellants have challenged the

order passed by the Additional Sessions Judge, Special Judge, under the Protection of Children from Sexual Offences Act, 2012 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Akola, by which the application of the appellants for grant of anticipatory bail is rejected.

3. The appellants are arraigned as an accused, as First Information Report has lodged by the victim, aged about 17 years, on an allegation that on 21/08/2021 at about 7.00 to 7.30 p.m., the appellant No.1 has outraged her modesty and modesty of her cousin sister, and the appellant No.2 has abused her on her caste. It is alleged that on 21/08/2021, at about 7 to 7.30 p.m., she along with her cousin had been to the stationary shop, at the relevant time, the present appellants were standing near a photo poster of Dr. Babasaheb Ambedkar, and at the relevant time, he had given such a gesture and outraged the modesty of the victim girl and her sister. He also abused the word and asked for sexual favors from them. He also pulled both of them towards him and touched their chest and the cheek. They shouted and ran towards their house and informed the incident to their parents. Thereafter, they approached the police station and lodged the report. On the basis of said report, police have registered the crime against the present appellants.

4. After registration of the crime, present appellants approached the Special Court for grant of bail, but the Special Court has rejected the same, observing that there is a bar under Section 18 of the Atrocities Act.

5. Being aggrieved and dissatisfied with the said order, the present appeal is preferred by the appellants on the ground that there is a previous dispute between the present appellants and the family members of the informant. Initially, the appellant No. 2 has lodged the report against the family members of the informant, and to give counter blast to the said FIR, this false FIR is lodged by taking advantage of the caste. He submitted that no prima-facie case is made out, therefore a bar under Section 18 is not attracted. As far as the custodial interrogation is concerned, which is not required. In view of that, they be protected by granting anticipatory bail.

6. The learned APP and learned counsel for the respondent No. 2 strongly opposed the said appeal on the ground that, in view of bar under Section 18, the learned trial court has rightly rejected the application. There is no merit in the appeal, in view of that, the appeal deserves to be dismissed.

7. It is further stated from the statement of the informant that, the offence is made out against the present appellant No. 1, who has knowingly outraged the modesty,

though he was aware that they belong to the Scheduled Caste and thereby committed an offence. They further submitted that, in view of the bar under Section 18, the appeal deserves to be dismissed.

8. After hearing learned counsel for the appellants and learned APP as well as learned counsel for the respondent No. 2, perused the entire investigation papers. There is no dispute as to the fact that there is a previous enmity between the appellants and the informant and her family members. It is also not in dispute that prior to the incident, the appellant No.2 lodged the report against the family members of the victim. As far as the allegations are concerned, admittedly the allegation of outraging the modesty is against the appellant No. 1. As far as the appellant No. 2 is concerned, there are general allegations made against them. On perusal of the investigation papers, it reveals that not only the victim, but various witnesses have witnessed the said incident, which shows that present appellants caught hold of both the victim and the cousin, and outraged their modesty. Thus, as far as the appellant No. 1 is concerned, there is sufficient material to show his involvement in the alleged offence.

9. The basic ingredients to constitute the offence under Section 3(1)(r) of the Act, 1989 are concerned, which are as under;

- 1] Accused person must not be a member of the Scheduled Caste or Scheduled Tribe;
- 2] Accused must intentionally insult or intimidate a member of a Scheduled Caste or Scheduled Tribe;
- 3] Accused must do so with the intent to humiliate such a person; and
- 4] Accused must do so at any place within public view.

10. As far as the ingredients of the offences are concerned, the statement of the victim and the statement of the various witnesses shows that, though the appellants have knowing that they belongs to Scheduled Castes and Scheduled Tribes, he has not only passed the comments towards them, but he has physically touched the person of the victim and her cousin sisters and outraged the modesty.

11. As far as the intent to humiliate is concerned, the Hon'ble Apex Court in the recent decision in the case of *Shajan Skaria Vs The State of Kerala and another in Criminal Appeal No. 2622 Of 2024 (Arising out of SLP (Crl.) No. 8081 of 2023) dated 23/08/2024*. By referring the various judgments and observed that, the dictum has laid down, the aforesaid is that the offence under Section 3(1)(r) of the Act, 1989 is not established merely on the fact that the complainant is a member of a Scheduled Caste or a

Scheduled Tribe, unless there is an intention to humiliate such a member for the reason that he belongs to such community. In other words, it is not the purport of the Act, 1989 that every act of intentional insult or intimidation meted by a person who is not a member of a Scheduled Caste or Scheduled Tribe to a person who belongs to a Scheduled Caste or Scheduled Tribe would attract Section 3(1)(r) of the Act, 1989, merely because it is committed against a person who happens to be a member of a Scheduled Caste or Scheduled Tribe. On the contrary, Section 3(1)(r) of the Act, 1989 is attracted where the reason for the intentional insult or intimidation is that the person who is subjected to it belongs to a Scheduled Caste or Scheduled Tribe, because of object behind the enactment of the Act, 1989 was to provide stringent provisions for punishment of offences which are targeted towards persons belonging to the SC/ST communities for the reason of their caste status.

12. The words “with intent to humiliate” as they appear in the text of Section 3(1)(r) of the Act, 1989 are inextricably linked to the caste identity of the person who is subjected to intentional insult or intimidation. Not every intentional insult or intimidation of a member of a SC/ST community will result into a feeling of caste-based humiliation. It is only in those cases where the intentional insult or intimidation takes place either due to the prevailing practice of untouchability or to reinforce the historically

entrenched ideas like the superiority of the “upper castes” over the “lower castes / untouchables”, the notions of ‘purity’ and ‘pollution’, etc. that it could be said to be an insult or intimidation of the type envisaged by the Act, 1989.

13. By applying this observations of the Hon’ble Apex Court, what appears from the expression “intent to humiliate” as it appears in Section 3(1)(r) of the Act, 1989 must necessary be construed in the larger contest in which the concept of humiliation of the marginalised groups has been understood by various authorities. It is not ordinary insult or intimidation which would amount to ‘humiliation’ that is sought to be made punishable under the Act, 1989. The sexual harassment of a women at workplace or sexual harassment of a woman and manner includes treatment causing humiliation to a female employee or female which may likely affect for health and safety within the definition of sexual harassment.

14. Thus, considering the above aspect, if the facts of the present case are considered, admittedly the case is made out against the appellant No. 1, as far as the humiliation and insult are concerned. As far as appellant No. 2 is concerned, there are no specific and general allegations made against her.

15. Coming on the aspect of the bar under Section 18, it is well settled that when prima-facie case is made out

against the accused, the bar under Section 18 is attracted. It is well settled by the catena of the decision that when a prima facie case is not made out, the bail for anticipatory bail can be entertained. In the recent decision in the case of ***Prathvi Raj Chauhan vs Union Of India [(2020) 4 SCC 727]***, wherein the Hon'ble Apex Court makes it abruptly clear that even by upholding the validity of Section 18A of the Act, this Court observed that if the complaint does not make out a prima-facie case for applicability of the provisions of the Act, 1989 when the bar created by Section 18 and 18-A shall not apply, and thus the Court would not be precluded from granting pre-arrest bail to the accused persons.

16. Considering the allegations against the present appellants as far as the appellant No.1 is concerned, the said bar will attract, and therefore, the application of the appellant No.1 for grant of anticipatory bail deserves to be rejected. Whereas, considering the role attributed to the appellant No.2 is concerned, no prima-facie case is made out, and therefore the bar will not attract.

17. In view of that, appeal deserves to be allowed partly. Accordingly, I proceed to pass the following order;

- a] The Criminal Appeal is **allowed partly**.
- b] The appellant No.2- ***Varsha w/o Vijay Patkar*** shall be released on anticipatory bail in the event of her arrest in connection with Crime No.

800/2021 registered with Police Station Civil Lines, Akola for the offence punishable under Sections 354, 354-A, 294, 506 read with Section 34 of the Indian Penal Code, 1860; Sections 11 and 12 of the Protection of Children From Sexual Offences Act, 2012 and Sections 3(1)(w) (i)(ii) and 3(1)(r)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, on executing P.R. Bond of Rs. 25,000/- with one solvent surety in the like amount.

- c] The order passed by the Special Court rejecting the application of the appellant No.2 is hereby quashed and set aside.
- d] The prayer for grant of anticipatory bail of the appellant No.1 is hereby **rejected** and the order passed by the Special Court to the extent of rejecting the application of the appellant No.1 is maintained.
- e] The fees of the appointed counsel be quantified as per Rule.
- f] The appellant No.2 shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

g] The appellant No.2 shall attend the concerned Police station as and when required for the investigation purpose and shall cooperate with the investigating agency.

The criminal appeal is **disposed of partly.**

[URMILA JOSHI-PHALKE, J.]