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

CRIMINAL APPEAL NO.431 OF 2024

Tejrao s/o Kundlik Shinde,
Age : 44 Years,
Occupation : Agril,
R/o. Yevati, Taluka Risod,
District Washim.

..... APPELLANT

// VERSUS //

1. The State of Maharashtra,
Through Police Station Officer,
Washim Rural Police Station,
Taluka Risod, District Washim.

2. XXX
(Crime No.258/2024 through
Police Station Officer, Police Station,
Washim Rural Washim)
Aged 14 Year, Occupation – Education,
R/o Yevati, Taluka Risod,
District Washim.

.... RESPONDENTS

Mr. N. L. Jaiswal, Counsel h/f Mr. S. D. Jadhao Counsel for the
appellant.
Mr. N. B. Jawade, APP for respondent No.1/State.
Mr. N. D. Dawda, appointed Counsel for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 24.10.2024

ORAL JUDGMENT :

1. **Admit.**

2. Heard finally with the consent of the learned Counsel
appearing for the parties.

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3. The present appeal is preferred under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 as the learned Special Judge, Washim has rejected the application of the present appellant for grant of anticipatory bail in connection with Crime No.258/2024 registered with Police Station Washim Rural, District Washim for the offence punishable under Sections 354-A, 294, 504 and 506 of the Indian Penal Code and under Section 8 of the Protection of Children from Sexual Offences Act, 2012 and under Sections 3(1)(w)(i), 3(1)(w)(ii), 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 appellant is apprehending the arrest at the hands of police as crime is registered on the basis of report lodged by the victim girl aged 14 years on an allegation that on 06.06.2024 at about 10.30 a.m., she had been to the premises namely, Pandhari for answering the nature's call and after answering the nature's call, when she was tying the knot of her pant, the present appellant came there and pulled her and therefore, she shouted for help, at the relevant time, her mother came there, and there was a hot exchange of words between her mother and the present appellant and present appellant abused her on her caste. On the basis of the said report, police have registered the crime.

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5. After registration of the crime, the appellant approached the learned Special Court for grant of bail in the event of the arrest. The learned Special Court has rejected the application by observing that there is a bar under Section 18 of the Act of 1989 and rejected the application.

6. Heard learned Counsel for the appellant who submitted that with a false and baseless allegation, the present FIR is lodged. He further submitted that as far as the allegations are concerned, the offence under the provisions of Atrocities Act is not made out and therefore, the bar under Section 18 or 18-A of the Act of 1989 is not attracted. He further submitted that there is no statement that present appellant was knowing that she belongs to the Scheduled Caste and knowingly she was abused by the present appellant on the caste. He further submitted that due to the incident, the victim used the cattle shed of the present appellant for answering the nature's call and the present appellant inquired with her and this false FIR was lodged. The FIR is after two days, and there is no explanation for the said delay. Considering all these aspects, the appellant be released on anticipatory bail. In support of his contention, he placed reliance on **Swaran Singh and others Vs. State and another** reported in **(2008) 8 SCC 435**.

7. Per contra, learned APP and learned Counsel for the respondent No.2 strongly opposed the said application on the

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ground that the appellant, the victim, and her mother are residents of the same village therefore, the appellant was knowing that she belongs to the Scheduled Caste. As far as the public view is concerned, the spot panchnama shows that the alleged spot of incident is in front of the Samaj Mandir, so, this incident has occurred within the public view. It is further submitted that considering that 14 years girl was subjected for the sexual harassment by the present appellant. The *prima facie* case is made out and when *prima facie* case is made out, the bar will attract. In view of that, the learned trial Court has rightly rejected the application and hence, the appeal is devoid of merits and liable to be dismissed.

8. After hearing the learned Counsel for the appellant and learned APP for the State as well as learned Counsel for the respondent No.2, perused the recitals of the FIR as well as the investigation papers. As far as the submission that the crime is registered on the basis of false allegations, there is nothing on record to show that there was any previous enmity and any reason for the victim or her mother to implicate the present appellant falsely in the alleged offence. Another aspect is whether the alleged incident has taken place within the public view. The spot panchnama shows that the alleged spot of incident was situated near the Samaj Mandir. The boundaries of the spot of incident are

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also mentioned in the spot panchnama, which shows that towards the East of the said spot panchnama, there is an agriculture field of Sakharam Shinde and Maroti Waman Shinde and towards the West there is stream and the remaining land of Sakharam Shinde and Shalik Eknath Shinde and towards the North there is Samaj Mandir at the distance of 200 ft. and towards the South there is land of one Shinde. Thus, as far as the contention of the learned Counsel for the appellant that the alleged incident has taken place as the victim has used the cattle shed of the present appellant for answering the nature's call is falsified by the contents of the said spot panchnama, as the alleged incident has taken place in the open space. The statements of the witnesses also show that the said incident has taken place within the public view, therefore, the contention of the learned Counsel for the appellant that the alleged incident has not taken place within the public view, in view of the decision of the **Swaran Singh and others** (supra) is not helpful to the present appellant to release him on bail.

9. As far as the application of the provisions of the Act of 1989 is concerned, this aspect is recently dealt by the Hon'ble Apex Court in the case of **Shajan Skaria Vs. The State of Kerala and another in Criminal Appeal No.2622/2024 decided on 23.08.2024**, wherein the ingredients of the offence and the aspect of when the bar will attract is extensively dealt by the Hon'ble Apex

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Court. As far as the essential ingredients of Section 3(1)(r) are concerned, the basic ingredients to constitute the offence under Section 3(1)(r) of the Act, 1989 are accused person must not be a member of the Scheduled Caste or Scheduled Tribe, the accused must intentionally insult or intimidate a member of a Scheduled Caste or Scheduled Tribe, accused must do so with the intent to humiliate such a person and accused must do so at any place within public view.

10. It is further observed by the Hon'ble Apex Court that all insults or intimidations to a member of the Scheduled Caste or Scheduled Tribe will not amount to an offence under the Act, 1989 unless such insult or intimidation is on the ground that the victim belongs to Scheduled Caste or Scheduled Tribe.

11. The various decisions which are considered by the Hon'ble Apex Court and the Hon'ble Apex Court has observed 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

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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 the 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.

12. In the light of the above observations, if the facts of the present case are taken into consideration, the recitals of the FIR shows that when the victim aged about 14 years had attended the nature's calls and was tying the knot, at that time, she was pulled by the present appellant and when she was shouting for the help at that time also she was not allowed to go. On the contrary, she was caught by the present appellant and her mother has rescued her. Even accepting the contention that the bar is not attracted, the act of the present appellant is sufficient to show that the offence under Section 354-A of the Indian Penal Code and under Section 8 of the Protection of Children from Sexual Offences Act, 2012 will attract against the present appellant. Considering the circumstances under which the alleged incident has taken place and the act of the present appellant, no case is made out for grant of anticipatory bail.

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In view of that, the appeal is devoid of merits and liable to be dismissed. Accordingly, I proceed to pass following order:

ORDER

- (i) The appeal is dismissed.
- (ii) The fees of the appointed Counsel be quantified as per rules.

(URMILA JOSHI-PHALKE, J.)

Sarkate.