



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

CRIMINAL APPEAL NO. 538 OF 2023

APPELLANT: Amol Atmaram Gawande
Aged 32 years, Occupation- Service,
R/o Sutala (Khurd), Taluka- Khamgaon,
District Buldhana.

...V E R S U S...

RESPONDENTS 1] State of Maharashtra,
through Police Station Officer,
Khamgaon (Gramin) Police Station,
Taluka Khamgaon, District Buldhana.

2] Ankush Chindhaji Bangar,
Aged 22 years, Occupation- Labourer,
R/o Parkhed, Taluka Khamgaon,
District Buldhana.

Mr. Swanand Khedkar, counsel h/f Mr. A.D. Bhate, counsel for
appellant.

Mr. A.G.Mate, APP for the respondent No.1.

Mr. M.V.Rai, counsel for the respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 31/01/2024

ORAL JUDGMENT :

1. Heard. **Admit.**
2. Heard finally with the consent of the learned counsel
appearing for the parties.
3. By preferring this appeal, the appellant has

challenged the order passed by the Additional Sessions Judge, Khamgaon under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for short ' the Act of 1989') by which the application of the appellant has rejected.

4. The appellant is apprehending arrest at the hands of police, as crime is registered against him on the basis of report lodged by Ankush Bangar on an allegation that on 29/7/2023 at about 9 p.m., when he was working on the Thresher Machine of one Sachin Shinde and after finishing his work, he was proceeding on his motorcycle, at that time, two persons were quarreling with each other. Therefore, he stopped his vehicle near the place, at the relevant time, two persons came on the motorcycle by Nandura Road and assaulted him by slaps and fist blows. It is further alleged that out of these two persons, present applicant is one of them who has abused him, on his caste on the basis of said report, police have registered the crime against the present appellant.

5. Learned counsel for the appellant submitted that even from perusal of the First Information Report, there is no whisper regarding the abuses which were attached by the present appellant in the name of his caste within the public view. Therefore, no prima-facie case is made out against the present appellant and therefore, the bar under Section 18 or 18A is not attracted. The physical custody of the present appellant is not required and he be protected by granting anticipatory bail.

6. Learned APP strongly opposed the appeal on the ground that learned trial Court has rightly considered that there is a bar under Section 18 of the Act of 1989 and rightly rejected the application. From recitals of the First Information Report, it reveals

that the present appellant has abused the informant on his caste and prima-facie case is made out against the present appellant. In view of that, the appeal is devoid of merits and liable to be dismissed.

7. Learned counsel for the respondent No.2 endorsed the same contention and submitted that in view of the bar under Section 18 of the Act of 1989, the application for anticipatory bail is not maintainable. The learned trial Court has rightly appreciated this fact and no interference is called for.

8. After hearing 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 and the impugned order. The learned trial Court has held that from the recitals of the First Information Report, it reveals that the prima-facie case is made out and in view of Section 18 of the Act of 1989, there is a bar, as far as the applicability of Section 438 of the Code of Criminal Procedure is concerned, rejected the application.

9. On perusal of the First Information Report, it reveals that the allegation against the present appellant is that when the informant was at Parkhed Phata, two motorcyclist came there and abused and assaulted him. From recitals of the First Information Report, it shows that 2 to 3 abuses were mentioned by the informant in the First Information Report but as far as the abuses on the caste is concerned, it is only mentioned that he was abused on the caste. There is no specific allegation by mentioning the exact words used by the present appellant.

10. As far as the observation of the learned trial Court

regarding the bar is concerned, now it is well settled that the grant of anticipatory bail under Section 438 of the Cr.P.C. is barred, in respect of the offences under the Act of 1989. However, where the prima-facie case is not made out and anticipatory bail can be granted in appropriate circumstances which a cautious exercise of power. The Section 18 and 18-A of the Act of 1989 have no application where prima-facie case is not made out. It is observed by the Hon'ble Supreme Court of India in the case of ***Prathvi Raj Chauhan vs Union of India and others*** reported in **(2020) 4 SCC 727** by referring the various judgments that the scope of Section 18 of the Scheduled Caste and Scheduled Tribes Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no Court shall entertain an application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. The Court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence

11. The Hon'ble Apex Court has referred the judgment in the case of ***Shakuntla Devi Vs Baljinder Singh*** reported in **(2014) 15 SCC 521** has held that the High Court has not given any finding

in the impugned order that an offence under the aforesaid Act is not made out against the respondent and has granted anticipatory bail, which is contrary to the provisions of Section 18 of the aforesaid Act as well as the aforesaid decision of this Court in the case of ***Vilas Pandurang Pawar & Anr vs State Of Maharashtra & Ors reported in 2012 (8) SCC 795***. Hence, without going into the merits of the allegations made against the respondent, we set aside the impugned order of the High Court granting bail to the respondent.

12. It is further observed by the Hon'ble Apex Court that concerning the provisions contained in Section 18A, suffice it to observe that with respect to preliminary inquiry for registration of First Information Report, we have already recalled the general directions (iii) and (iv) issued in the case of ***Dr. Subhash Kashinath Mahajan vs The State Of Maharashtra reported in 2018 (6) SCC 454***. A preliminary inquiry is permissible only in the circumstances as per the law laid down by a Constitution Bench of this Court in ***Lalita Kumari Vs. State of U.P reported in (2014) 2 SCC 1***.

13. Thus, the Hon'ble Apex Court after referring the various decisions held that the Court can, in exceptional cases, exercise power under Section 482 of the Cr.P.C. for quashing the cases to prevent misuse of provisions on settled parameters, as already observed while deciding the review petitions, and it is held that grant of anticipatory bail under Section 438 of the Cr.P.C. is barred in respect of the offences under the Act of 1989, however, where prima-facie is not made out, anticipatory bail can be granted in appropriate circumstances with a cautious exercise of power.

14. Relying upon the observations of the Hon'ble Apex Court if the facts of the present case are perused, it is general a statement made by the informant that the appellant has abused him on his caste. The words uttered by the present appellant is not mentioned. Thus, it is a vague allegation.

15. In view of that, the prima-facie case is not made out and therefore, the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not attracted. The custodial interrogation of the present appellant is also not required. In view of that, the interim protection granted to the present appellant deserves to be confirmed. Accordingly, I proceed to pass following order:

- a) The criminal appeal is **allowed**.
- b) The order passed by the learned Additional Sessions Judge, Khamgaon in Criminal Bail Application No. 233/2023 rejecting the anticipatory bail application is quashed and set aside.
- c) In the event of his arrest, the appellant -**Amol Atmaram Gawande**, shall be released on ad-anticipatory bail, on executing PR Bond in the sum of Rs. 25,000/- with one solvent surety in the like amount, in connection with Crime No. 269/2023 registered with Police Station Khamgaon (Gramin) Tq. Khamgaon, District Buldhana for the offences punishable under Sections 143, 294 and 323 of the Indian Penal

Code, 1860 and Sections 3(1)(r) and 3(1)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

- d) The appellant shall attend the concerned Police Station as and when required for the investigation purpose.
- e) The appellant shall furnish his cellphone number(s) and address with address proof.

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

[URMILA JOSHI-PHALKE, J.]