



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

CRIMINAL APPEAL NO. 426 OF 2024

APPELLANT: Gopal @ Aashish Ramraoji Datkar,
Aged about 50 years,
Occupation: Agriculturist, R/o Hingani,
Tah. And District Akola.

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

RESPONDENTS 1. The State of Maharashtra,
 through Police Station Officer,
 Police Station City Kotwali, District Akola.

 2. Dr. Kalpana Ashok Palaspagar,
 Aged about 35 years, Occupation:
 Sarpanch, R/o Ganori Post Dahihanda,
 H.M. Sudhir Colony, Civil Lines, Akola,
 Tah. and District Akola.

Mr. A.R. Deshpande, counsel for appellant.
Mr. H.D. Dubey, APP for respondent/State.
Ms. Aastha Sharma, counsel (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 06/12/2024

ORAL JUDGMENT :

1. Heard.

2. **Admit.**

3. Heard finally with consent of learned counsel appearing for the parties.

4. By preferring this appeal, the appellant has challenged the order dated 02/08/2024 passed by the learned Special Judge under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, Akola in Criminal Bail Application No. 448/2024.

5. The crime is registered on the basis of a report lodged by Dr. Kalpana Ashok Palaspagar on an allegation that she is Sarpanch of village Hingni Bk. and belongs to the Scheduled Caste, and on 11.07.2024 she went to the office of the Chief Executive Officer, Zilla Parishad, Akola for the hearing of the Village Panchayat matters. When she went in the cabin of Chief Executive Officer, Zilla Parishad, Akola at about 6.00 p.m. with Village Development Officer More and her father, Deputy Chief Executive Officer Parihar, Block Development Officer Rudrakar, the present appellant, and few more persons and some residents of village Hingni were present. When the Block Development Officer called the informant and Village Development Officer

Roshani More in the Cabin of the Chief Executive Officer, the present appellant demanded Village Panchayat Form No.8-A from the informant and threatened her and also abused her on her caste. On the basis of the said report, police have registered the crime under Sections 296, 352 and 351(3) of the Bhartiya Nyaya Sanhita, 2023 and under Section 3(1) (r), 3(1)(s), 3(2)(va) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act of 1989').

6. Learned counsel for the appellant submitted that from the recitals of the FIR, even if it is accepted as it is, there is only a reference of the caste. As far as the abuses on the caste are concerned, there is no specific allegation against the present appellant. He also invited my attention towards the police reply wherein the Police Officer i.e. Investigating Officer has specifically mentioned that during inquiry with some of the witnesses, it is revealed that no such incident, i.e. the abuses by the present appellant, has taken place. He submitted that this fact itself is sufficiently shows that the appellant is implicated in the false crime. As far as the custodial interrogation is concerned, which is not required. He submitted that the offence is also not committed

within the public view therefore, the allegations and the crime registered under Sections 3(1)(r) itself is not attracted. He further submitted that the bar is also not attracted, as no prima-facie case is made out against the present appellant. In view of that, he be protected by granting anticipatory bail.

7. Learned APP strongly opposed the said appeal and submitted that the observations in the order passed by the learned Special Court sufficiently show the involvement of the present appellant. The statement of the witnesses and the language used by the present appellant is very filthy language, and it is not sufficient to attract the provision of the Atrocities Act, therefore, the appeal deserves to be dismissed.

8. Learned appointed counsel for the respondent No. 2 has also strongly opposed the appeal and filed her reply and submitted that, in fact, the investigating officer has not investigated the matter properly, and the accused persons are made as witness. On the basis of the statement of the said witnesses, the reply is filed before the Court. Thus, no fair investigation is carried out by the investigating agency.

9. After hearing the learned counsel for the appellant

and the learned APP for the State, perused the recitals of the FIR as well as the investigation papers. From the reply filed by the Investigating Officer before the learned trial Court itself is sufficient to show that it was not the appellant who has abused the informant on her caste. It is specifically mentioned in the said reply that from the statements of the witnesses, it is revealed that the abuses on the caste are not by the present appellant. However, the learned Special Court has not considered the same and accepted the allegations which are levelled in the FIR and considering the bar under Section 18A of the Act of 1989, the application of the present appellant was rejected. Even accepting the allegation as it is, as per the FIR, there should be an intentional insult or humiliation. This aspect is recently considered by the Hon'ble Apex court in the case of *Shajan Skaria Vs The State Of Kerala & Anr. In Criminal Appeal No. 2622/2024 (Arising out of SLP (Crl) No. 8081/2023 dated 23/08/2024.*

10. Moreover, the bar under Section 18-A of the Act of 1989 is concerned, when there is no prima-facie case made out, the bar under Section 18A of the Act 1989 would not attract, in view of that, the appeal deserves to be admitted and allowed.

11. Considering all these circumstances, the appellant has made out a case for grant of anticipatory bail. Accordingly, I proceed to pass following order:

ORDER

- a] The criminal appeal is allowed.
- b] The order passed by the learned Special Judge under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, Akola in Criminal Bail Application No. 448/2024 dated 02/08/2024 is hereby quashed and set aside.
- c] In the event of arrest, in connection with Crime No.239/2024 registered with City Kotwali Police Station, Akola, District Akola for the offences punishable under Sections 296, 352 and 351(3) of the Bhartiya Nyaya Sanhita, 2023 and under Section 3(1)(r), 3(1)(s), 3(2) (va) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellant Gopal @ Aashish Ramraoji Datkar shall be released on anticipatory bail on executing PR bond in the sum of Rs.25,000/- with

one solvent surety in the like amount.

- d] The appellant shall attend the concerned police station as and when required for the investigation purpose and shall cooperate with the investigating agency.
- e] The appellant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- f] The fees of the appointed counsel be quantified as per rules.

The Criminal Appeal is **disposed of**.

[URMILA JOSHI-PHALKE, J.]