



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

CRIMINAL APPEAL NO. 571 OF 2023

- APPELLANTS :**
1. Anil S/o Dilip Shinde,
Aged about 39 years, Occu - Labour
 2. Akashay S/o Prakash Shinde,
Aged about 27 years, Occu. Labour.

All R/o : Dhotardi, Tq. and Dist. Akola.

V E R S U S

- RESPONDENTS :**
1. State of Maharashtra
Through P. S. O. P. S. Borgaon Manju,
Dist. Akola.
 2. Chandrakant Niranjana Wankhade,
Dhotardi, Tq. and Dist. Akola.

Shri A. S. Londhe, Advocate for appellants.

Shri S. S. Hulke, A. P. P. for respondent No.1-State.

Mrs. Kirti Deshpande, Advocate (Appointed) for respondent No.2.

CORAM: URMILA JOSHI-PHALKE, J.

DATED : 23/01/2024.

ORAL JUDGMENT :

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

2. By preferring this appeal, the appellants have challenged the order passed by the Special Court rejecting the anticipatory bail of present applicants in connection with Crime No.291/2023 registered under Sections 323, 504, 506 r/w Section

34 of the Indian Penal Code and Sections 3(1)(r) and 3(2)(va) of the Scheduled Castes and the Schedules Tribes (Prevention of Atrocities) Act, 1989 (For short, "Atrocities Act").

3. The appellants are apprehending arrest at the hands of police as crime is registered on the basis of report lodged by the complainant alleging that he belongs to Scheduled Caste and on the day of incident i.e. on 28/07/2023 at 8.00 p.m. when he was proceeding towards his home after attending the labour work, the present appellants abused him on his caste and also, manhandled him by fists and slaps. On the basis of said report, police have registered a crime.

4. Shri Londhe, learned counsel for the appellants appeared through Video Conferencing and submitted that he has filed on record his written submissions. He submitted that the offence under Sections 3(1)(r) and 3(2)(va) of Atrocities Act is not made out. Mere reference of the caste of a person of the scheduled caste is not sufficient to attract the provisions of the Atrocities Act as no prima facie case is made out. Therefore, bar under Sections 18 and 18-A of the Atrocities Act is not attracted against the present appellants. Considering the allegation made against them, no offence is made out against the present appellants. Their

custodial interrogation is not required and they be granted bail by granting anticipatory bail.

5. Learned Additional Public Prosecutor strongly opposed the said application on the ground that the appellants have referred the informant by his caste and also, abused him on his caste. Thus, prima facie case is made out against the present appellants. The intention of the present appellants appears from the recitals of the FIR that with intent to humiliate and insult the informant, they have abused on his caste within the public view. Thus, offence is made out and therefore, there is bar under Section 18-A of the Atrocities Act. In view of that, application deserves to be rejected.

6. Heard learned counsel for the respondent No.2 and she reiterated the said contention and endorsed that as the informant was humiliated and insulted within public view, the offence is made out against the present appellants and therefore, the appeal is devoid of merit and is liable to be dismissed.

7. Having heard learned counsel for the appellants, learned APP for the State, as well as Ms. Kiriti Deshpande, learned counsel for the respondent No.2, perused the order passed by learned Trial Court. The learned Trial Court has considered that

there is bar under Sections 18 and 18-A of the Atrocities Act and rejected the application. Being aggrieved with the same, the appellants have challenged the order before this Court on the ground that from the recitals of the FIR itself, the offence is not made out against the present appellants. Therefore, the observations of the Trial Court that bar under Section 18 or 18-A of the Atrocities Act is attracted, is erroneous and liable to be set aside and quashed. On perusal of the FIR, it reveals that as per the allegation, the appellants have referred the informant by his caste by saying that "Dhedgya". It is well settled that mere referring the person by his caste is not sufficient to attract the provisions of the Atrocities Act. There should be intention to humiliate or insult the person who belongs to the Scheduled Castes and Scheduled Tribes. Admittedly, nothing is mentioned in the FIR regarding the abuses uttered by the present appellants. From the recitals also, it is difficult to ascertain that whether the incident is happened within the public view. Considering that no offence is made out against the present appellants as far as the applicability of the provisions of the Atrocities Act are concerned, it is now well settled that in view of the Judgment of the Hon'ble Apex Court that when there is no prima facie case is made out in appropriate circumstances, anticipatory bail can be granted.

8. The Hon'ble Apex Court recently in the case of **Prathvi Raj Chauhan Vrs. Union of India and others**, reported in **(2020) 4 SCC 727** observed that grant of anticipatory bail under Section 438 of Cr.P.C. is barred in respect of the offences under the Atrocities Act. However, prima facie case is not made out, anticipatory bail can be granted in appropriate circumstances with cautious exercise of power. Sections 18 and 18-A of Atrocities Act have no application where prima facie is not made out, however, for evaluating prima facie case, re-appreciation of evidence is not required.

9. In the light of above observations of the Hon'ble Apex Court, there is no allegation that the appellants have abused the informant on his caste. Thus, no prima facie case is made out. From the recitals of the FIR, appeal deserves to be allowed. In view of that, I proceed to pass the following order :-

ORDER

- i] The appeal is allowed.
- ii] The appellants, in the event of arrest in connection with Crime No.291/2023 registered under Sections 323, 504, 506 r/w Section 34 of the Indian Penal Code and Sections 3(1)(r) and 3(2)(va) of the Scheduled Castes and the Schedules Tribes (Prevention of Atrocities) Act, 1989, be released on anticipatory bail

on executing P. R. Bond of Rs.25,000/- each with one solvent surety of the like amount.

iii] The appellants shall attend the concerned police station as and when required for the investigation purpose.

iv] The appellants shall not induce, threat or promise to any witnesses, who are acquainted with the facts of the present case.

v] Fess of Mrs.Kirti Deshpande, learned counsel (Appointed) for respondent No.2 be quantified, as per the Rules.

10. The appeal is disposed of.

[URMILA JOSHI-PHALKE, J.]