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

CRIMINAL APPEAL NO.469 OF 2024

1. Manoj s/o Santosh Janghel,
Age 29 Years, Occupation : Business,
R/o Suraj Niwas, Street No.1,
Gopal Nagar, Gudhiyari,
Raipur (Chhatisgarh).
2. Narendra s/o Rameshwarlal Sharma,
222, Ward No.16, Jodhpur
Bhojnalaya, New Bus Stand, Balod,
(Chhatisgarh).

..... APPELLANTS

// VERSUS //

1. The State of Maharashtra,
Through Police Station Officer,
Police Station, Chichgarh,
Gondia.
2. Rajesh s/o Gokul Nandeshwar,
Aged about : 35 Years,
Occupation: Farmer,
R/o.: At Mispiri, Post Deori,
Tahsil Deori, District Gondia.

.... RESPONDENTS

Mr. R. S. Naik, Counsel for the appellants.
Mr. H. D. Dubey, APP for respondent No.1/State.
Mr. S. G. Joshi, appointed Counsel for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 19.10.2024

ORAL JUDGMENT :

1. **Admit.**

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

3. The present appeal is preferred by the appellants under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as 'the Act of 1989'), challenging the orders passed in Misc. Criminal Bail Application Nos.206/2004 and 207/2024 which are decided by the learned Special Court, Gondia on 20.07.2024 and the pre-arrest bail applications of the present appellants are rejected.

4. Learned Counsel for the appellants submitted that the crime is registered on the basis of report lodged by Rajesh Gokul Nandeshwar on an allegation that he belongs to the Scheduled Caste. On 24.05.2024 at about 6.00 a.m., he was going to Hitapahadi for bringing the labours and his cousin was accompanying him. While he was returning along with the labours, their motorcycle was intercepted by 12 - 13 persons. The informant has witnessed that appellants and their associates were beating the cousin of the informant by means of iron rod, hockey stick etc. The informant has stated that his cousin was seriously injured in the said attack and fallen down. On the basis of the raid report, police have registered the crime against the appellants.

5. Heard learned Counsel for the appellants who submitted that due to the dispute between them, the alleged incident has

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taken place. As far as the custodial interrogation is concerned, which is not required. Now the investigation is completed and charge-sheet is filed. He further submitted that the injury certificate shows that the injured are the key persons who have sustained the simple injuries. As far as the bar under Section 18-A of the Act of 1989 is concerned, he submitted that the entire FIR is silent on the fact that the appellants were knowing that they belongs to the Scheduled Caste and knowingly they have assaulted the informant and the other injured witnesses with intent to insult or humiliate them. He submitted that merely because they belongs to the Scheduled Castes or Scheduled Tribes is not sufficient to attract the provisions of the Atrocities Act. Considering that no *prima facie* case is made out, they be protected by granting anticipatory bail.

6. Learned APP and learned Counsel for respondent No.2 strongly opposed the said ground on the contention that the informant and the other injured witnesses belongs to the Scheduled Caste. It is further submitted that in view of Section 18-A of the Act of 1989, there is a bar to entertain the anticipatory bail application. A *prima case* is made out against the present appellants as the involvement is seen. In the said incident, three persons are injured. In view of the bar under Section 18-A of the Act of 1989, learned trial Court has rightly rejected the application, no grounds are made out for grant of anticipatory bail.

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7. After hearing the learned Counsel for the appellants and learned APP for the State and learned appointed Counsel for the respondent No.2, perused the investigation papers from which it reveals that there was a previous dispute between the present appellants and the informant and the other injured witnesses. Due to the previous dispute, this alleged incident appears to be occurred. In the said incident, three persons have sustained the injuries. The injury certificates are collected during the investigation, which shows that they have sustained the simple injuries. The some weapons are already recovered and the same are already referred to the Medical Officer who has given his opinion that injury sustained by the injured are possible by the recovered weapons. Thus, as far as the investigation part is concerned, which is already over and the charge-sheet is filed. The main contention of the learned APP and learned Counsel for the respondent No.2 that in view of bar under Section 18-A of the Act of 1989, the anticipatory bail application rightly rejected by the trial Court and no interference is called for. Whereas it is contention of the learned Counsel for the appellants that there is no statement in the FIR that though the appellants were knowing that the informant and the other injured are belonging to the Scheduled or Scheduled Tribes and knowingly they have insulted the injured as well as the informant. He submitted that as there is no statement bar under Section 18-A is not attracted.

8. Recently this aspect is considered 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 Hon'ble Apex Court held 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. There is nothing in the investigation papers to show that the appellants were knowing the fact that the complainant and the other injured witnesses belongs to the Scheduled Caste.

9. It is further held by the Hon'ble Apex Court that thus, the dictum as laid 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.

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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.

10. It is further held that 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.

11. Thus, what appears from the observation of the Hon'ble Apex Court that the expression "intent to humiliate" as it appears in Section 3(1)(r) of the Act, 1989 must necessarily be construed and the concept of humiliation of the marginalised groups has been understood by various decisions. It is not ordinary insult or intimidation which would amount to 'humiliation' that is sought to be made punishable under the Act, 1989.

12. In view of the above observation of the Hon'ble Apex Court, here the appellants have made out a case for grant of anticipatory bail and therefore, appeal deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(i) The appeal is allowed.

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(ii) The order passed by the Special Court below Exh.1 in Misc. Criminal Bail Application Nos.206 and 207 of 2024 is hereby quashed and set aside.

(iii) The appellant **No.(1) Manoj s/o Santosh Janghel No.(2) Narendra s/o Rameshwarlal Sharma** shall be released on anticipatory bail in the event of their arrest in connection with Crime No.40/2024 registered under Sections 141, 143, 147, 148, 326, 324, 341, 504 and 506 read with Section 149 of the Indian Penal Code and under Section 37(1) of the Maharashtra Police Act and under Sections 3(2)(v) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, on executing PR Bond in the sum of Rs.25,000/- each with one solvent surety in the like amount.

(iv) The appellants shall attend the concerned Police Station as and when required for the investigation purpose and shall cooperate with the investigating agency.

(v) The appellants shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

13. The fees of the appointed Counsel be quantified as per rules.

14. The appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate.