



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

CRIMINAL APPEAL NO. 595 OF 2023

APPELLANT: Izhar Gyasuddin Sheikh
Aged about 45 years, Occu- Business,
R/o Near Virani Talkies, in front of Surana
Hospital, Wani, Yavatmal.

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

RESPONDENTS 1] State of Maharashtra,
PSO PS Wani, District Yavatmal.

2] Nikhil Dharma Dhurke,
Aged about 25 years, Occu- Student,
R/o Rangnath Nagar, Wani,
District Yavatmal.

Mr. Firdos Mirza, counsel with Mr. Mir Nagman Ali, counsel for
appellant.

Mr. A.R.Chutke, Additional Public Prosecutor for the respondent
No.1.

Mr. G.N. Khanzode, counsel for the respondent No.2.

CORAM : **URMILA JOSHI-PHALKE, J.**
DATE : **21/02/2024**

ORAL JUDGMENT :

1. Heard. **Admit.**
2. Heard finally with the consent of the learned counsel
appearing for the parties.
3. Challenging the order passed by the Special Court,

Tahsil Kelapur, District Yavatmal in Criminal Bail Application No. 137/2023, dated 30/08/2023, who is a Special Judge under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act of 1989'). The present appellant prefers this appeal for grant of pre-arrest bail, in connection with Crime No. 807/2023 registered with Police Station Wani, District Yavatmal for the offences punishable under Sections 109, 143, 147, 148, 307, 326, 506 read with Section 149 of the Indian Penal Code, 1860 and under Sections 3(2)(va), 3(2), 3(V) and 6 of the Act of 1989.

4. The learned counsel appearing for the appellant Mr. Firdos Mirza submitted that no prima facie case is made out to attract the offence under the provision of the Act of 1989. There are no allegations against the present appellant in the First Information Report to attract the provisions of the Special Act. The allegations are that on 09/08/2023 at about 4.30 p.m., the informant and his friend Shaikh Jalil Sheikh Fraid were proceeding towards their house. At that time, two persons namely Aslam Abbas Pathan and Wasim Shaikh approached to them and abused them as well as assaulted them. At that time, three more persons came there who have covered their faces, they have also

assaulted them. He submitted that as far as the present appellant is concerned, who was not present at the spot of the incident, his custodial interrogation is not required. He submitted that there is no allegation against him that he either abused the informant or his friend on their caste, therefore the provisions of the Act of 1989 are not attracted against him.

5. Learned Additional Public Prosecutor and learned counsel for the informant strongly opposed the appeal on the ground that the First Information Report specifies the role attributed to the present appellant. There is a bar under Section 18-A of the Act of 1989 to grant anticipatory bail. The custodial interrogation of the present appellant is required, as there is specific allegations against him. The informant has sustained the grievous injuries like fracture injuries. In view of that, the learned trial Court has rightly rejected the application, and no interference is called for.

6. Having heard learned counsel for the appellant, learned Additional Public Prosecutor for the State, learned counsel for respondent No.2, perused the recitals of the First Information Report. As far as the recitals of the First Information Report are concerned, with specific allegation against the present appellant

which is only to the extent that the present appellant asked the mother of the informant to give understanding to the informant, and attempted to assault him. Except for these allegations, there is no other allegation to attract the provisions of the Act of 1989.

7. Now, it is well settled that while considering the application for grant of anticipatory bail in view of the provisions of the Act of 1989 whether bar under Section 18 or 18A of the Act of 1989 is attracted, the prima-facie case is to be looked into. The Hon'ble Apex Court in the case of *Prathvi Raj Chauhan V/s Union of India and others [(2020) 4 SCC 727]*, in a catena of the decisions it is held that ground of anticipatory bail under section 438 of the Code of Criminal Procedure is barred, in respect of the offences under the Act of 1989. However, where prima-facie case is not made out, anticipatory bail can be granted in appropriate circumstances with a cautious exercise of power. Section 18 and 18A of the Act of 1989 have no application where prima-facie case is not made out. However, for evaluating the prima-facie case, re-appreciation of evidence is not required.

8. In the light of the above observations, if the recitals of the First Information Report are considered, admittedly there is no allegation against the present appellant to the extent of attracting

the provisions of the Special Act. In view of that, the Division Bench of this Court has already protected him by granting ad-interim protection. Considering the same, the ad-interim protection granted to the present appellant deserves to be confirmed.

9. The Learned trial Court has not taken into consideration that the bar under Section 18-A is attracted only when the prima-facie case is made out. In view of that order passed by the Special Court rejecting the application deserves to be quashed and set aside. Accordingly, I proceed to pass the following order:

- a) The criminal appeal is allowed.
- b) The order passed by the Additional Sessions Judge-2 (Special Judge), Kelapur , District Yavatmal under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, in Criminal Bail Application No. 137/2023 dated 30/08/2023 is hereby quashed and set aside.
- c) In the event of his arrest, the appellant – Izhar Gyasoddin Sheikh is released on anticipatory bail, in

connection with crime No.807/2023 registered at Police Station, Wani Tahsil Wani, District- Yavatmal for the offences punishable under Sections 109, 143, 147, 148, 307, 326, 506 read with Section 149 of the Indian Penal Code, 1860 and under Sections 3(2)(va), 3(2), 3(V) and 6 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on executing PR Bond in the sum of Rs. 25,000/- with one solvent surety in the like amount.

- d) The appellant shall not directly or indirectly make any inducement, threat or promise to any person who are acquainted with the facts of the present case.

The Criminal Appeal is **disposed of** accordingly.

[URMILA JOSHI-PHALKE, J.]