



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

CRIMINAL APPEAL NO.499 OF 2024

AND

CRIMINAL APPEAL NO.500 OF 2024

AND

CRIMINAL APPEAL NO.501 OF 2024

CRIMINAL APPEAL NO.499 OF 2024

1. Lakhan s/o Kisan Rathod
Aged 28 years, Occupation – Agri,
2. Suraj s/o Pandit Chavhan
Aged 23 years, Occupation – Agril,
3. Karan s/o Bramhadas Rathod
Aged 27 years, Occupation – Agril.

Both R/o Aregaon,
Tq. Pusad, District Yavatmal

...APPELLANTS

VERSUS

1. The State of Maharashtra,
through Police Station Officer,
Pusad city, Tq. Pusad,
District Yavatmal
2. Datta s/o Gajanan Doifode
Age – Adult, Occ. Labour,
R/o Aregaon, Tq. Pusad,
District Yavatmal

...RESPONDENTS

CRIMINAL APPEAL NO.500 OF 2024

1. Ramesh s/o Ramdhan Rathod
Aged 48 years, Occupation – Agri,

2. Akash s/o Ramesh Rathod
Aged 26 years, Occupation – Agril,
Both R/o Aregaon,
Tq. Pusad, District Yavatmal

...APPELLANTS

VERSUS

1. The State of Maharashtra,
through Police Station Officer,
Pusad city, Tq. Pusad,
District Yavatmal
2. Datta s/o Gajanan Doifode
Age – Adult, Occ. Labour,
R/o Aregaon, Tq. Pusad,
District Yavatmal

...RESPONDENTS

CRIMINAL APPEAL NO.501 OF 2024

1. Shesherao Ramdhan Rathod
Aged 68 years, Occupation – Nil
2. Sandip Laxman Ade
Aged 29 years, Occupation – Agril,
Both R/o Aregaon,
Tq. Pusad, District Yavatmal

...APPELLANTS

VERSUS

1. The State of Maharashtra,
through Police Station Officer,
Pusad city, Tq. Pusad,
District Yavatmal
2. Datta s/o Gajanan Doifode
Age – Adult, Occ. Labour,
R/o Aregaon, Tq. Pusad,
District Yavatmal

...RESPONDENTS

Mr. VR. Thote, Advocate for the appellants.
Mr. S.V. Narale, APP for the State.
Mr. Vinay Sharma, Advocate for respondent No.2.

CORAM : **URMILA JOSHI-PHALKE, J.**

DATED : **NOVEMBER 29, 2024.**

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel for the parties.

2. By preferring these appeals under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act of 1989'), the appellants have challenged the order dated 21/08/2024 passed by the learned Additional Sessions Judge, Court No.1, Pusad, District Yavatmal in Criminal Bail Application Nos.170/2024, 169/2024 and 154/2024 by which the applications of the present appellants for grant of anticipatory bail was rejected.

3. The present appellants were arraigned as an accused in connection with Crime No.201/2024 registered with Police Station, Pusad, District Yavatmal for the offences punishable under Sections 143, 147, 148, 323, 324 read with Section 149 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and the

Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act of 1989'). The allegation against the present appellants is on the basis of report lodged by Datta Gajanan Doifode alleging that there was a marriage ceremony in his house, at the relevant time, the present appellants and other co-accused by forming an unlawful assembly, came in front of his house and assaulted him as well as his relatives and also abused them on their castes. On the basis of the said report, police have registered the crime against the present appellants.

4. Learned Counsel for the appellants submitted that as far as the appellants in Appeal No.500/2024 are concerned, their names are not mentioned in the FIR and against the other appellants i.e. in Appeal Nos.499/2024 and 501/2024 are concerned, the omnibus allegations are levelled against them. He submitted that even considering the recitals of the FIR, there are no averments as to the abuses on the castes or the Tribes. He submitted that the co-accused against whom the allegation of assault is made is already released on bail i.e. on the regular bail. He further submitted that now investigation is completed and charge-sheet is filed, further incarceration of the present appellants is not required. He further submitted that in fact, no *prima facie* case is made out as there is omnibus allegations against the present appellants, and

therefore, the bar under Section 18 of the Act of 1989 will not attract. In view of that, they be protected by granting anticipatory bail.

5. Learned APP strongly opposed the said appeals on the ground that though in the FIR the specific role is not attributed to the present appellants but in a subsequent statement the informant has specifically stated the names of the present appellants and the weapons which they were holding in their hand. He further submitted that considering the role attributed to the present appellants by the informant, the specific act is attributed, and therefore, bar under Section 18 will attract.

6. Learned Counsel Mr. Sharma reiterated the said contention and submitted that while considering the interim application, the other investigation papers were not before the Court and on the basis of the recitals of the FIR, the Court has observed that no *prima facie* case is made out. In fact, the statement of the informant specifically states about the role of the present appellants. In view of that, bar will attract and learned trial Court by considering the same, rightly rejected the application, therefore, no interference is called for.

7. I have heard learned Counsel for the parties. Perused the recitals of the FIR as well as the submissions of learned Counsel for the

appellants. On perusal of the recitals of the FIR admittedly, the specific role is attributed only to the Suraj Kailas Rathod. As far as the other appellants are concerned, only their names were mentioned. There is no dispute as to the fact that the investigation is completed and charge-sheet is filed. On perusal of the subsequent statement of the informant it reveals that informant has assigned a specific role to the present appellants by mentioning that they were also holding the weapons in their hand. As far as the allegation regarding the abuses on the caste are concerned it is an omnibus allegations that all the appellants and co-accused abused him on his caste. Admittedly, there is no specific allegation as far as the abuses on the caste are concerned and there is only a reference of the caste as per the allegations. As far as the role attributed to the present appellants are concerned admittedly, at initial statement while lodging the FIR no such specific role is attributed to the present appellants but on 05/04/2024 when subsequent statement was recorded that role is attributed to the present appellants. Considering now investigation is already completed and other co-accused are already released on bail. Only aspect is to be considered whether bar will attract or not.

8. As far as the ingredients of the offence are concerned, this aspect is recently dealt by the Hon'ble Apex Court in the case of *Shajan Skaria Vs. The State Of Kerala & Anr. In Criminal Appeal No. 2622 Of*

2024 (Arising Out Of Slp (Crl.) No. 8081 Of 2023) wherein the Hon'ble Apex Court has also dealt with the aspect of the purport of the Act, 1989 and it is held that the Act, 1989 have been enacted to improve the social and economic conditions of the vulnerable sections of the society as they have been historically subjected to various indignities, humiliations and harassment besides deprivation of life and property on account of their caste identity. The legislation, thus, intends to punish the acts committed against the vulnerable sections of the society for the reason that they belong to a particular community.

Section 18 of the Act, 1989 which makes the remedy of anticipatory bail unavailable in cases falling under the Act, 1989.

A plain reading of Section 18 referred that it bars the applicability of Section 438 of the Cr.P.C. in respect of offences under the Act, 1989. The legislature in its wisdom thought fit that the benefit of anticipatory bail should not be made available to the accused in respect of offences under the Act, 1989, having regard to the prevailing social conditions which give rise to such offences and the apprehension that the perpetrators of such atrocities are likely to threaten and intimidate the victims and prevent or obstruct them in the prosecution of such offences, if they are allowed to avail the benefit of anticipatory bail.

9. The Hon'ble Apex Court has further referred the judgment of *State of Madhya Pradesh v. Ram Krishna Balothia reported in (1995) 3 SCC 221* wherein the constitutional validity of Section 18 of the Act, 1989 fell for the consideration of the Hon'ble Apex Court and it is held that on the aspect of Article 21 of the Constitution, it was held by this Court that although Article 21 protects the life and personal liberty of every person in this country, which also includes the right to live with dignity, yet it cannot be said that Section 438 of the CrPC is an integral part of Article 21. The Court took notice of the fact that there was no provision similar to Section 438 in the Criminal Procedure Code, 1898 and ultimately concluded that anticipatory bail is not granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. Therefore, it was observed, that the non-application of Section 438 to a certain distinct category of offences cannot be considered as violative of Article 21 of the Constitution.

10. After referring its various judgments, the Hon'ble Apex court it is held that the provisions inserted by way of carving out Section 18-A of the Act, 1989 referred to above were made the subject matter of challenge in *Prathvi Raj Chauhan v. Union of India [(2020) 4 SCC 727]*. In the said case, it is held by the Hon'ble Apex Court if the prima facie case is not made out then the anticipatory bail application can be

considered. In Prathvi Raj Chauhan (supra) makes it abundantly clear that even while upholding the validity of Section 18-A of the Act, 1989, if the complaint does not make out a *prima facie* case for applicability of the provisions of the Act, 1989 then the bar created by Sections 18 and 18-A(i) shall not apply and thus the court would not be precluded from granting pre-arrest bail to the accused persons.

11. The aspect of applicability of Section 3(1)(r) of the Act is also considered by the Hon'ble Apex Court and it is held that the basic ingredients to constitute the offence under Section 3(1)(r) of the Act, 1989 are:

- a. Accused person must not be a member of the Scheduled Caste or Scheduled Tribe;
- b. Accused must intentionally insult or intimidate a member of a Scheduled Caste or Scheduled Tribe;
- c. Accused must do so with the intent to humiliate such a person; and
- d. Accused must do so at any place within public view.

12. It is further 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.

13. in the light of the above observation, if the facts of the present case are taken into consideration admittedly, there is omnibus allegations in the FIR against the present appellants. Moreover, now investigation is completed, charge-sheet is filed. As far as the bar under Section 18 is concerned it is already observed that it will not attract. In view of that, the interim protection granted to the present appellants deserves to be confirmed. Accordingly, I proceed to pass following order:

(i) The appeals are allowed.

(ii) The orders dated 21/08/2024 passed by the Additional Sessions Judge, Court No.1, Pusad, District Yavatmal in Criminal Bail Application Nos.170/2024, 169/2024 and 154/2024, is hereby quashed and set aside.

(iii) In the event of arrest, the appellants – 1) Lakhan s/o Kisan Rathod, 2) Suraj s/o Pandit Chavhan, 3) Karan s/o Bramhadas Rathod, 4) Ramesh s/o Ramdhan Rathod, 5) Akash s/o Ramesh Rathod, 6) Shesherao Ramdhan Rathod, 7) Sandip Laxman Ade in connection with Crime

No.201/2024 registered with Police Station, Pusad, District Yavatmal for the offences punishable under Sections 143, 147, 148, 323, 324 read with Section 149 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, be released on anticipatory bail on executing P.R. Bond in the sum of Rs.25,000/- each with one solvent surety each 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 either personally or by way of electronic media.

14. All the appeals are disposed of.

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

(URMILA JOSHI-PHALKE, J.)