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

CRIMINAL APPEAL NO.508 OF 2024

Kaif Khan @ Kalu Mujib Khan,
Age – 25 Years,
Occupation : Labour,
R/o Nignur, Bitargaon,
Tahsil : Umarkhed,
District : Yavatmal.

..... APPELLANT

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Bitargaon Police Station,
Tahsil : Umarkhed, District Yavatmal.

2. X.Y.Z.
In crime no.142/2024
dated 05/04/2023
registered by P.S.O. Bitargaon,
Tahsil Umarkhed, District Yavatmal.

.... RESPONDENTS

Mr. A. A. Zade, Counsel h/f Mr. Shahrukh Sheikh, Counsel for
the appellant.

Mr. S. A. Ashirgade, APP for respondent No.1/State.

Ms. Radha M. Mishra, appointed Counsel for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 14.11.2024

ORAL JUDGMENT :

1. **Admit.**

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

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3. By preferring this appeal, the appellant has challenged the order passed by the learned Additional Sessions Judge, (Court No.1), Pusad, District Yavatmal by which the application of the appellant for grant of anticipatory bail is rejected vide order dated 06.08.2024.

4. The accusation against the present appellant is on the basis of report lodged by the victim, on an allegation that she is a resident of village Nignur, Taluka Umarkhed, District Yavatmal belongs to the Scheduled Caste. On 14.04.2024 when they were celebrating the birth anniversary of Dr. Babasaheb Ambedkar, at the relevant time, the present applicant approached her and expressed his feelings and also hold her hands and outraged her modesty. On resistance by her, he abused her on her caste by saying "महाराची लई माजली का" and also assaulted her, at the relevant time, her mother and other witnesses were present. On the basis of the said report, police have registered the crime against the present appellant.

5. After registration of the crime, the appellant approached to the learned Special Court for grant of bail, but the Special Court has rejected the application in view of bar under Section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act of 1989).

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6. Being aggrieved and dissatisfied with the same, present appeal is preferred by the appellant. Learned Counsel for the appellant submitted that as far as the present appellant is concerned, no *prima facie* case is made out and therefore, bar under Section 18 of the Act of 1989 will not attract. He further submitted that the case of outraging the modesty is also not made out. The incident has not occurred within the public view, for all the above terms, the bar will not attract. He further submitted that as far as the custodial interrogation is concerned, which is not required. In view of that, the order passed by the learned Special Court deserves to be quashed and set aside. In support of his contention, he placed reliance on various decisions of this Court in **Criminal Appeal No.111/2024 [Aaditya Raju Dayal Vs. State of Maharashtra, and another] decided on 29.04.2024, Criminal Appeal No.297/2024 [Sumer Khan S/o Afsar Khan and another Vs. State of Maharashtra and another] decided on 12.06.2024 and Criminal Appeal No.469/2023 [Sabir Firoj Garave and another Vs. The State of Maharashtra and another] decided on 01.09.2023.**

7. Per contra, learned APP submitted that considering the recitals of the FIR, wherein the specific allegation is levelled against the present appellant, within the public view present appellant has not only referred the caste of the victim but also abused her in a

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filthy language on her caste and therefore, the bar under Section 18 of the Act of 1989 will attract. In view of that, the appeal deserves to be dismissed.

8. Learned appointed Counsel for the respondent No.2 reiterated the contentions and submitted that in view of the bar under Section 18 of the Act of 1989, the appeal deserves to be dismissed.

9. After hearing the learned Counsel for the appellant, learned APP for the State and learned appointed Counsel for the respondent No.2, perused the investigation papers. On perusal of the recitals of the FIR, it reveals that the specific allegation is levelled against the present appellant that he has abused the informant on her caste by abusing her in a filthy language. As far as the other statements of the witnesses are concerned, which substantiate the said contentions. Considering the submissions made by the learned Counsel for the appellant is concerned, it is well settled that grant of anticipatory bail under Section 438 of the Code of Criminal Procedure is barred in respect of the offence under the Act of 1989. However, where the *prima facie* case is not made out anticipatory bail can be granted in an appropriate circumstances with a cautious exercise of power. This aspect whether the bar is attracted or not attracted is dealt by the Full Bench of the Rajasthan High Court **Virendra Singh Vs State of Rajasthan** reported in

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2000 Cri. L.J. 2899 wherein it is held that if a person is even alleged of accusation of committing an offence under the Act of 1989, the intention of Section 18 is clearly to debar him from seeking the remedy of anticipatory bail and it is only in the circumstances where there is absolutely no material to infer as to why Section 3 has been applied to implicate a person for an offence under the Act of 1989, the Courts would be justified in a very limited sphere to examine whether the application can be rejected on the ground of its maintainability. What is intended to be emphasized is that while dealing with the application for anticipatory bail, the courts would be justified in merely examining as to whether there is at all an accusation against a person for registering a case under Section 3 of the Act of 1989 and once the ingredients of the offence are available in the First Information Report or the complaint, the courts would not be justified in entering into a further inquiry by summoning the case diary or any other material as to whether the allegations are true or false or whether there is any preponderance of probability of commission of such an offence. Such an exercise is intended to put to a complete bar against the entertainment of application of anticipatory bail which is unambiguously laid down under Section 18 of the Act of 1989, which is apparent from the perusal of the section itself.

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10. This issue is dealt by this Court in the catena of decisions as well as in the case of **Vilas Pandurang Pawar and anr. Vs. State of Maharashtra and others** reported in **2012 ALL MR (Cri) 3743 (S.C.)**, wherein the Hon'ble Apex Court held that no Court shall entertain an application for anticipatory bail in the offence registered under the provisions of the Act of 1989 unless it *prima facie* finds that such an offence is made out. Similar principles are laid down by this Court also. In such circumstances if the facts of the present case are taken into consideration there is a specific allegations against the present appellant. Moreover, the alleged incident has taken place within the public view. In view of that *prima facie* case is made against the present appellant and the bar under Section 18 of the Act of 1989 will attract.

11. Considering the well settled law and the facts of the present case, the learned Special Court has rightly considered that there is a bar under Section 18 of the Act of 1989, and the appeal is devoid of merits and liable to be dismissed. Accordingly, I proceed to pass following order:

ORDER

- (i) The appeal is dismissed.
- (ii) The fees of the appointed Counsel be quantified as per rules.

(URMILA JOSHI-PHALKE, J.)