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

CRIMINAL APPEAL NO.511 OF 2024

Amol s/o Suresh Anasane,
Aged about : 33 Years,
Occupation : Labour,
R/o – At Post Aidlapur,
Taluka Akot, District Akola.

..... APPELLANT

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Hiwarkhed Police Station,
Taluka Tehara, District Akola.

2. Sau Sima w/o Suresh Bagde,
Aged about 35 Years,
Occupation : Labour,
R/o – At post Chorvad,
Taluka Akot, District Akola.

.... RESPONDENTS

Mr. B. K. Suchak, Counsel for the appellant.
Mr. N. B. Jawade, APP for respondent No.1/State.
Ms. Deepali Patil Sahare, appointed Counsel for
respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 22.10.2024

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 Special Judge, Akot in Criminal Bail Application No.89/2024 by which the application of the present appellant for grant of anticipatory bail is rejected.

4. The appellant is apprehending the arrest at the hands of police in connection with Crime No.223/2024 registered with Hiwarkhed Police Station for offences punishable under Sections 324, 354, 354-A, 354-B, and 506 of the Indian Penal Code, 1860, and Sections 3(2), 3(2)(va), 3(1)(r), 3(1)(s), 3(1)(w)(i), and 3(1)(w)(ii) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "Atrocities Act").

5. The crime is registered on the basis of a report lodged by Seema Suresh Bagde alleging that there was a political rivalry between her husband and the present appellant on account of the Gram Panchayat election. On 20/06/2024, the present appellant abused them based on their caste, as well as gave a blow of weapon on the head of her husband, due to which her husband has sustained the injury. On the basis of said report, police have registered the crime against the present appellant. After registration of the crime, the present appellant approached the Special Court for grant of bail, but the Special Court has rejected the application, considering there is a bar under Section 18 of the Atrocities Act.

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6. Learned Counsel for the appellant submitted that there is a political rivalry and the criminal complaints are filed against each other. As far as the allegation that the present appellant has abused on her caste is out of political rivalry. He submitted that the wife of the present appellant is pregnant of 9 months and she may deliver the child at any time. There is nobody to look after her. In the facts and circumstances, the appellant be protected by granting anticipatory bail. He further submitted that the simple injury is sustained by the injured. Now he is discharged from the hospital. As far as the recovery of the weapon is concerned, no such allegations are levelled against him. In view of that, the order passed by the learned Special Judge deserves to be quashed and set aside and appellant be protected by granting anticipatory bail.

7. Learned APP and learned appointed Counsel for the respondent No.2/complainant strongly opposed the said appeal on the ground that in furtherance of common intention, the present appellant and other co-accused abused and humiliated the informant and her husband, and her husband was assaulted by the present appellant by giving blows on his head. There is a bar under Section 18, and therefore, the learned trial Court has rightly rejected the application. The appeal is devoid of merits and deserves to be dismissed.

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8. After hearing the learned Counsel for the appellant and learned APP for the State and learned appointed Counsel for the respondent No.2/complainant, perused the investigation papers which shows that FIR is lodged by the informant, who is the wife of the injured. From the recitals of the FIR, it reveals that the alleged incident has taken place in front of the Grampanchayat at about 7.00 p.m., at the relevant time, the present appellant was under the influence of liquor and allegedly abused them on their caste by saying "धेडग्याचे हो तुम्हाले कायले पद पाहीजे खा आणि रहा तुमचे जातीला गावात राहू देतो हेच मोठा आहे तुमचे साथी माजले तुम्ही छिनालचे हो सगळ्या धेडग्यायले कापुन टाकीन", at the relevant time the witnesses namely, Rajpal Madhukar Labade, Akash Dhande, Rajkumar Ganesh Labade, Nagorao Sudhakar Dandge were present. The recitals of the FIR further shows that in the said incident, the injured was assaulted by the other co-accused as well as the present appellant and present appellant has also outraged the modesty of the informant. On the basis of said report, police have registered the crime against the present appellant and the other co-accused.

9. Learned Counsel for the appellant submitted that the other co-accused is already released on bail, in the event of arrest and the similar allegations are levelled against the present appellant. In view of that, on the ground of parity also the present appellant is entitled to be protected by granting anticipatory bail.

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He submitted that considering that the wife of the present appellant is 9 months pregnant and there is nobody to look after her on that ground also the appellant shall be released on bail.

10. Per contra, learned APP strongly opposed the said application and invited my attention towards the investigation papers as well as the observation of this Court in the earlier bail application, wherein it is observed that the major role is attributed to the present appellant as far as the abuses are concerned.

11. After hearing the learned Counsel for the appellant and learned APP for the State and learned appointed Counsel for the respondent No.2/complainant, perused the investigation papers from which it reveals that the allegation of the abuses on the caste are levelled against the present appellant. Considering the nature of the abuses which are levelled against the present appellant appears to be that there were abuses in a filthy language. The said incident admittedly took place within the public view in presence of the witnesses. The investigation is at the initial stage, and yet the statements of the material witnesses are to be examined. The statement of the husband of the informant is already recorded, who corroborated the version of the informant on all material contents. The husband of the informant has also sustained the injuries in the said incident. It reveals from the investigation papers that the independent witnesses are already served with the notice to record

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their statements. The statement of Akash Mohan Dhande is already recorded which shows that at the relevant time, he was not present at the time of incident. Thus, considering the statement of the informant and her husband it reveals that the alleged incident has taken place within the public view.

12. Now the prime question is whether the bar under Section 18 of the Act of 1989, is attracted and when it is attracted. In the catena of decisions, it is held that mere reference of the caste is not sufficient and in that circumstances, the bar will not attract. It is further held by the Hon'ble Apex Court that if *prima facie* case is not made out, then anticipatory bail is maintainable. The bar under Sections 18 or 18-A is extensively dealt 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 by referring the catena of decision in para No.38 the Hon'ble Apex Court observed that:

"It was observed by this Court that although Section 18 of the Act, 1989 creates a bar for invoking Section 438 of the CrPC yet the courts are entrusted with a duty to verify the averments in the complaint and to find out whether an offence under the Act, 1989 is prima facie made out or not. It was further observed that while considering the application for anticipatory bail, the scope for appreciation of evidence and other material is limited and the courts are not expected to undertake an intricate evidentiary inquiry

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of the materials on record. The relevant observations are reproduced hereinbelow:

"9. Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been prima facie made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail.

10. The scope of Section of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no Court shall entertain application for anticipatory bail, unless it prima facie finds that such an offence is not made out.

Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. Court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence."

13. In the case of **Rahnaj Alal Vs. State of Kerala** report in **(2021) 1 SCC 733** while discussing in the context of Section 7 of the Muslim Women (Protection of Rights on Marriage) Act 2019 elaborated on the requirement of the existence of prima facie case under Section 18 of the Act, 1989 for the bar of anticipatory bail to become applicable it is observed that:

*"Thus, even in the context of legislation, such as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, where a bar is interposed by the provisions of Section 18 and Sub-section (2) of Section 18-A on the application of Section 438 of the CrPC, this Court has held that the bar will not apply where the complaint does not make out "a prima facie case" for the applicability of the provisions of the Act. A statutory exclusion of the right to access remedies for bail is construed strictly, for a purpose. Excluding access to bail as a remedy, impinges upon human liberty. Hence, the decision in **Prathvi Raj Chauhan Vs. Union of India and others (2020) 4 SCC 727** held that the exclusion will not be attracted where the complaint does not prima facie indicate a case attracting the applicability of the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989."*

"Thus, it is clear from the above aforesaid provision that Section 18 of the Act of 1989 does not impose an absolute bar on the power of the Courts to examine whether a prima facie case attracting the provisions of the Act 1989 is made or not. As discussed Section 18 stipulates that in any case which involves the

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arrest of any person on an accusation of having committed an offence under the Act of 1989. The benefit of anticipatory bail under Section 438 of Cr. P.C would not be available to the accused."

14. In the view of the above observation, if the facts of the present case are considered, the prime allegation against the present appellant, and the abuses are in the filthy language. Thus, from which the *prima facie* case is made out against the present appellant and in view of the catena decisions when *prima facie* case is made out against the accused therein then bar will attract. In view of that, the appeal is devoid of merits.

15. The learned Special Judge has rightly considered that the bar will attract and the application for grant of anticipatory bail is not maintainable and rejected the application. In view of that, the appeal deserves 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.)