



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

CRIMINAL APPEAL NO.541 OF 2024

Nilesh s/o Suresh Pendharkar
Aged about 47 years, Occupation – Service,
R/o Raviraaj Nagar, Pusad,
Tq. Pusad, District Yavatmal

...APPELLANT

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Police Station Vasant Nagar,
Pusad, Tq. Pusad, District Yavatmal
2. Varsha w/o Devanand Burkule
Aged about 39 years, Occupation – Service,
R/o. Behind Heda Mart,
Vasant Nagar, Pusad,
Tq. Pusad, District Yavatmal

...RESPONDENTS

Ms A. Paunikar, Advocate h/f Mr. S.V. Sirpurkar, Advocate for the
appellant.

Mr. S.V. Narale, APP for the State.

Ms Bhavya Dhruv, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : NOVEMBER 14, 2024.

ORAL JUDGMENT :

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

2. By preferring this appeal 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 appellant has challenged the order passed by the learned Special Judge, Pusa, District Yavatmal in Criminal Bail Application No.243/2024 by which the application of the present appellant for grant of anticipatory bail is rejected.

3. The appellant is apprehending arrest at the hands of police as crime is registered on the basis of the report lodged by the victim alleging that the present appellant and the co-accused had forwarded obscene photographs on her mobile phone and outraged her modesty. It is further alleged that she belongs to the Scheduled Tribe i.e. "Andh Adivasi" and staying with her husband and one daughter. It is further alleged that on the day of incident during the night, her husband had been to Chhatrapati Square, at the relevant time, the present appellant and the other co-accused assaulted him by fist and kick blows and also abused him on his caste and thereby humiliated and insulted him thereafter, the photographs are obtained and the said photographs are forwarded on her mobile phone. It is alleged that the husband of the informant was humiliated on the public place within the public view. On the basis of the said report police have registered the crime against the present appellant.

4. After registration of the crime, the appellant approached to the Special Court for grant of anticipatory bail; however, the Special Court has rejected the application observing that there is a bar under Section 18 of the Act of 1989 and being aggrieved with the same, present appeal is preferred.

5. Learned Counsel for the appellant submitted that as far as the allegations against the appellant along with the co-accused are concerned which are general in nature. There is no specific allegation that the present appellant is the person who abused her husband on his caste. He submitted that only to give a counterblast to a complaint filed by the co-accused Savita, this false FIR is lodged. Now the custodial interrogation of the present appellant is not required as nothing is to be recovered from him. As far as the bar under Section 18 of the Act of 1989 is concerned, which is not attracted, as there are no allegations as to the abuses on the caste. Even considering the allegation as it is, it is only the reference of the caste is there and therefore, no *prima facie* case is made out. In view of that the appellant be protected by granting anticipatory bail.

6. Learned APP and learned Counsel for respondent No.2 strongly opposed the appeal and submitted that in view of the bar under Section 18 of the Act of 1989, the application for anticipatory bail is

rightly rejected by the Special Court. They submitted that prima facie case is made out against the present appellant as there is a specific allegation that he has assaulted the husband of the informant by fist and kick blows. In view of that, the appeal deserves to be dismissed.

7. I have heard learned Counsel for both the parties. Perused the recitals of the FIR as well as the other documents which are filed on record including the investigation papers from which it reveals that as far as present appellant is concerned, there is absolutely no specific allegation that he has abused and uttered the words on the caste of the informant or her husband. The general allegation is made and the allegation is omnibus in nature which is only to the extent of reference of the caste. Considering the same, at this stage, the allegations are not sufficient to attract the provisions of the Atrocities Act, and therefore, bar under Section 18 of the Act of 1989 is not attracted. In view of that, the prayer for grant of anticipatory bail deserves to be allowed. Accordingly, I proceed to pass following order:

- (i) The appeal is allowed.
- (ii) The order dated 06/09/2024 passed by the Additional Sessions Judge, Pusa, District Yavatmal in Criminal Bail Application No.243/2024, is hereby quashed and set aside.

(iii) In the event of arrest, the appellant - Nilesh s/o Suresh Pendharkar in connection with Crime No.337/2024 registered with Police Station, Vasant Nagar, Pusad, Tq. Pusad, District Yavatmal, for the offences punishable under Sections 141, 143, 354-D, 384, 323, 294, 506 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(2)(va), 3(1)(w)(i) and 3(1)(w)(ii) 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/- with one solvent surety in the like amount.

(iv) The appellant shall attend the concerned Police Station as and when required for the investigation purpose on issuance of notice in advance by the Investigating Officer.

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

8. The appeal is disposed of.

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

(URMILA JOSHI-PHALKE, J.)