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

CRIMINAL APPEAL NO.551 OF 2024

Devesh Umeshsingh Charavande,
Aged – 18 Years,
Occupation: Education,
R/o. Dabki Road, Akola,
Taluka and District Akola.

.... APPELLANT

// VERSUS //

1. The State of Maharashtra,
Through Police Station Officer,
Police Station, Telhara,
Taluka Talhara, District Akola.
2. Sammyek Shyam Gawarguru,
Aged 18 Years,
Occupation: Student,
R/o. Telhara, District Akola.

.... RESPONDENTS

Mr. B. J. Lonare, Counsel for the appellant.
Mr. K. R. Lule, APP for respondent No.1/State.
Ms. Deepali Patil Shahare, appointed Counsel for respondent
No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 29.11.2024

ORAL JUDGMENT :

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

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3. This appeal is preferred by the appellant against the order passed by the learned Special Judge, Akot, District Akola in Criminal Bail Application No.113/2024 by which the application of the appellant for grant of anticipatory bail is rejected.

4. The crime is registered on the basis of report lodged by Sammyek Shyam Gawarguru on an allegation that on 29/07/2024 at about 2:30 p.m. he received a call of one Devesh Rajput i.e the present appellant and he called him to meet at Telhara. Accordingly, he went at Telhara to meet the present appellant, but the present appellant and three other unknown boys abused him and assaulted him by saying that he belongs to the lower caste. The appellant Devesh has also assaulted him by means of a fighter on his forehead. On the basis of the said report, police have registered the crime against the present appellant.

5. Learned Counsel for the appellant submitted that after registration of the crime, the appellant approached to the Special Court for grant of bail, but the Special Court in view of the 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') rejected the application and therefore, this appeal. He submitted that from the recital of the FIR, it reveals that the general allegation is made against the present appellant as far as the abuses on the caste are concerned. He submitted that there is

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no statement that the appellant was knowing that the victim/informant belongs to the Scheduled Caste and thereafter, the appellant has abused him on his caste and humiliated him with intention to insult him. Thus, the ingredients of the offences are not made out. Therefore, the bar under Section 18 of the Act of 1989 will not attract. In view of that, the order passed by the learned Special Court deserves to be quash and set aside.

6. Learned APP for the State and learned appointed Counsel for the respondent No.2 – informant strongly opposed the said appeal on the ground that from the recitals of the FIR itself, the offence is made out against the present appellant and in view of the bar under Section 18 of the Act of 1989, the application of anticipatory bail is not maintainable. Learned Special Court has rightly rejected the application and no interference is called for.

7. After hearing both the sides and on perusal of the recitals of the FIR from which it reveals that the words uttered by the present appellant is only to the extent that he belongs to the lower caste. There are no abuses uttered by the present appellant allegedly in the FIR. Considering the same, from the recitals of the FIR, no offence is made out. On perusal of the investigation papers, it reveals that the statements of the witnesses are recorded, however from the statements of witnesses also there is no allegation that what type of abuses are by the present appellant.

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The injury certificate also shows that the injured has sustained a simple injury.

8. Learned Counsel for the appellant placed reliance on the order of this Court the **Criminal Appeal No.534/2024 [Purushottam Wasudeo Fundkar Vs. The State of Maharashtra and another] decided on 19.10.2024** wherein this Court has considered the judgment of the Hon'ble Apex Court in **Shajan Skaria Vs. The State of Kerala in Criminal Appeal No.2622/2024 decided on 23.08.2024** and submitted that the observation made by the Hon'ble Apex Court in the said judgment if applied no offence is made out against the present appellant, in view of that, he be protected by granting anticipatory bail.

9. I have perused the investigation papers as well as the recitals of the FIR. Admittedly, only it is mentioned in the FIR that present appellant has uttered the words that he belongs to the lower caste and he is "Rajput" by caste. In the light of the observation of the Hon'ble Apex Court in the case of **Shajan Skaria Vs. The State of Kerala** referred supra the Hon'ble Apex Court 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. What is required is that the person should belongs to the Scheduled Caste

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and Scheduled Tribes and there should be intention to insult or intimidation to insult the person who belongs to the Scheduled Castes or Scheduled Tribes. The Hon'ble Apex Court held that the purport of the Act is not that every act of intentional insult or intimidation meted by a person who is not a member of a Scheduled Caste or Scheduled Tribe to a person who belongs to a Scheduled Caste or Scheduled Tribe would attract Section 3(1)(r) of the Act, 1989 merely because it is committed against a person who happens to be a member of a Scheduled Caste or Scheduled Tribe. Section 3(1)(r) of the Act, 1989 is attracted where the reason for the intentional insult or intimidation is that the person who is subjected to it belongs to a Scheduled Caste or Scheduled Tribe. Because the object behind the enactment of the Act, 1989 was to provide stringent provisions for punishment of offences which are targeted towards persons belonging to the SC/ST communities for the reason of their caste status.

10. In view of the above observations of the Hon'ble Apex Court, if the facts and circumstances of the present case are taken into consideration the bar under Section 18 of the Act of 1989 will not attract and, therefore, the appeal deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The appeal is allowed.

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(ii) The order passed by the learned Special Court in Criminal Bail Application No.113/2024 dated 29.08.2024 is hereby quashed and set aside.

(iii) In the event of arrest, the appellant **Devesh Umeshsingh Charavande** shall be released on anticipatory bail in connection with Crime No.208/2024, registered with Police Station, Telhara, District Akola for the offences punishable under Sections 118(1) and 3(5) of the Bharatiya Nyaya Sanhita, 2023 and under Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and the 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.

(iv) The appellant shall attend the concerned Police Station as and when required for the investigation purpose and shall cooperate with the investigating agency.

(v) The appellant shall not directly or indirectly make any inducement and threat or promise to any witnesses who are acquainted with the facts of the present case.

11. The fees of the appointed Counsel be quantified as per rule.

12. The appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)