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

CRIMINAL APPEAL NO.577 OF 2024

Deepak s/o Vishwasrao Belsare,
Aged about 48 Years,
Occupation : Service,
R/o Tuljapur,
Taluka Chandur (Railway),
District Amravati.

.... APPELLANT

// VERSUS //

1. The State of Maharashtra,
through Police Station Officer,
Police Station Chandur (Railway),
District Amravati.
2. Kamini Devidas Bansod,
Aged about 72 Years,
R/o Tuljapur,
Taluka Chandur (Railway),
District Amravati.

.... RESPONDENTS

Mr. S. P. Sonwane, Counsel, with Mr. A. A. Thakur, Counsel
with Mr. Aaquid Z. Mirza, Counsel with Ms. Shiba Thakur
Counsel for the appellant.

Ms. Kavita Bhongde, APP for respondent No.1/State.

Mr. S. D. Borkute, Counsel for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 03.12.2024

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, Amravati and Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, by which the application of the present appellant for grant of anticipatory bail is rejected.

4. The crime is registered on the basis of report lodged by one Kamini Devidas Bansod on an allegation that present appellant is Police Patil and on 31.08.2024, as the informant restrained the present appellant from cutting the babool trees on that account the informant was assaulted and abused by the present appellant on her caste. On the basis of the said report, police have registered the crime.

5. After registration of the crime, the appellant approached to the learned Special Court for grant of anticipatory bail, but the same was rejected by the learned Special Judge by passing order on 30/09/2024 holding that there is a bar under Section 18-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'The Act of 1989').

6. Being aggrieved and dissatisfied with the said order, present appeal is preferred by the appellant.

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7. Heard learned Counsel for the appellant who submitted that the alleged incident has taken place on 31.08.2024 whereas the FIR was lodged on 13.09.2024. Initially, the NC report was filed wherein there was no allegation against the present appellant that he either abused the injured i.e. the informant by fist and kick blows. The Initial NC was only to the extent that present appellant pushed the injured by kicking her. On the basis of the said allegation, the NC report was lodged on the same day and subsequent to the said NC report without obtaining the permission from the Magistrate in view of Section 174 of the Bharatiya Nagrik Suraksha Sanhita, 2023, the crime is registered against the present appellant. He submitted that moreover, omnibus allegations are levelled against the present appellant. As far as the custodial interrogation is concerned, which is not required. He submitted that the bar under Section 18 of the Act of 1989, will not attract as initially, no *prima facie* case was made out against the present appellant. In view of that, he be protected by granting anticipatory bail.

8. Learned APP strongly opposed the said prayer on the ground that there are serious allegations against the appellant and in view of Section 18-A of the Act of 1989, there is a specific bar and therefore, the application for anticipatory is not maintainable and the learned Special Court rightly rejected the same.

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9. Learned Counsel for the respondent No.2 strongly opposed the prayer and submitted that initially, the investigating agency has not taken on record the allegation levelled by the present appellant by the informant, as the present appellant is the Police Patil and therefore, she filed the written complaint to the police and thereafter, cognizance was taken and the FIR was lodged. He submitted that the appellant is an influential person and due to his influence, initially, the FIR was not registered against the present appellant. He submitted that in view of the bar under Section 18 A of the Act of 1989, the appeal deserves to be dismissed.

10. After hearing both the sides and on perusal of the investigation papers as well as the recitals of the FIR, it reveals that the alleged incident has taken place on 31.08.2024. Initially, the NC report was lodged on the basis of the report filed by the informant, wherein she nowhere alleged that either she was subjected for the abuses on her caste or there was an assault by the present appellant by fist and kick blows. Subsequent to the said NC report, she has filed the written complaint with the higher Authorities on 13.09.2024. Thus, the written complaint was also filed after 13 days of the incident, and thereafter, the said FIR came to be registered. It is further apparent that before the registration of the FIR, the Investigating Officer has not obtained any

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permission in view of Section 174 of the Bharatiya Nagarik Suraksha Sanhita, 2023. Section 174 deals with information as to the non-cognizable cases and investigation of such cases. The Section reads as under:

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may by rules prescribe in this behalf, and,—

(i) refer the informant to the Magistrate;

(ii) forward the daily diary report of all such cases fortnightly to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable. Thus, in view of Section 174 Sub Section (2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial. Thus, in the present case it is apparent that the Investigating Officer has not obtained such permission from the Magistrate before investigating the said crime.

11. As far as the bar under Section 18 of the Act of 1989, is concerned, which is recently dealt by the Hon'ble Apex Court in the case of **Shajan Skaria Vs. The State of Kerala in Criminal Appeal No.2622/2024 decided on 23.08.2024** wherein it is held that a plain reading of a statement and objects of the act that it was imperative to evolve a device by which an alleged accused is not compelled to face ignominy and disgrace at the instance of influential people who try to implicate their rivals in false cases. The purpose behind incorporating Section 438 in Cr.P.C was to recognise the importance of personal liberty and freedom in a free and democratic country. A careful reading of this section reveals that the legislature was keen to ensure respect for the personal liberty by pressing in service the age-old principle that an individual is presumed to be innocent till he is found guilty by the court.

12. The Act, 1989 could be said to 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.

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

"18. Section 438 of the Code not to apply to persons committing an offence under the Act.— Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act."

14. By referring the various Judgments of the Apex Court it is held that in **Prathvi Raj Chauhan vs. Union of India** reported in **(2020) 4 SCC 727** wherein it makes it abundantly clear that even while upholding the validity of Section 18-A of the Act, 1989, this Court observed that 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. In view of the observations of the Hon'ble Apex Court if the facts of the present case are considered admittedly initially there was no allegations as far as the abuses on the caste are concerned.

15. The aspect of application of Section 3(1)(r) is also dealt by the Hon'ble Apex Court in the said Judgment and it is held that

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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.*

It is further held in para 58 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.” It is nothing in the FIR to show that the informant is insulted by the present appellant, merely because she belongs to the Scheduled Caste.

16. Considering the fact that initially there were no allegations regarding the abuses of the caste and subsequently, it appears to be levelled against the present appellant. The present appellant is Police Patil as well as Veterinary doctor. Moreover, even considering the allegation as it is, it refers to the caste of the informant, in view of that, the bar under Section 18-A of the Act of 1989, will not attract. In view of that, the appellant has made out case for grant of

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anticipatory bail. Accordingly, I proceed to pass following order:

ORDER

- (i) The appeal is allowed.
- (ii) The order dated 30/09/2024 passed by the learned Special Judge and Additional Sessions Judge, Amravati in Criminal Bail Application No.864/2024, is quashed and set aside.
- (iii) In the event of arrest, the appellant **Deepak s/o Vishwasrao Belsare** shall be released on anticipatory bail, in connection with Crime No.428/2024 registered with Police Station, Chandur (Railway), District Amravati for the offences punishable under Sections 115, 329, 351(2), 351(3) and 352 of the Bharatiya Nyaya Sanhita, 2023 and under Sections 3(1)(r), 3(1)(s), 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 induce, threat of promise any witnesses who are acquainted with the facts of the case.

The appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)