



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

CRIMINAL APPEAL NO. 686 OF 2023

APPELLANT :

Swapnil Ramesh Pawar,
Age - 28, Occ - Engineer,
R/o Balaji Park, Kawdipur,
Tah. Pusad, Dist. Yavatmal.

V E R S U S

RESPONDENTS :

1. State of Maharashtra
Through Police Station Officer,
Police Station, Pusad,
Dist - Yavatmal.
2. Babarao Namdeorao Ubale,
Age - 65 Years, Occ - Journalist,
R/o Warud, Tal - Pusad,
Dist - Yavatmal.

Ms. Kirti Deshpande, Advocate h/f Shri R. R. Vyas, Advocate for
appellant.

Shri A. R. Chutke, Additional Public Prosecutor for respondent No.1.

Shri Sachin Ade, Advocate (Appointed) for respondent No.2.

CORAM: URMILA JOSHI-PHALKE, J.

DATED : 26/02/2024.

ORAL JUDGMENT :

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

2. By this appeal, the appellant has challenged the order
dated 12/10/2023 passed by Additional Sessions Judge, Pusad,
Dist. Yavatmal in Criminal Bail Application No.359/2023.

3. The accusation against the present appellant is on the basis of report lodged by Babarao Namdeorao Ubale on an allegation that he belongs to the "Mahar Community" and the present appellant is knowing about the same. After having knowledge, he has humiliated and insulted by abusing him on his caste. As per the allegation, present appellant who is a contractor, on 16/09/2023 at about 8.00 p.m., there was one function on the occasion of Engineer's Day in Ganoba Mangal Karyalaya. He was also present to attend the said function. After the said function, he has interviewed some people, at that time, present appellant came there and shouted in loud voice and also referred him by his caste and abused him on his caste and slapped him in a public view. Thus, the present appellant insulted and humiliated him with intention. On the basis of said report, police have registered the crime.

4. After registration of crime, present appellant approached to the Special Court for grant of bail, in the event of his arrest, the Trial Court has rejected the application, considering the bar under Section 18-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (For short, "the Act of 1989") and rejected the application.

5. Being aggrieved and dissatisfied with this order, present appeal is preferred by the appellant under Section 14-A of the Act of 1989.

6. Learned counsel for the appellant submitted that as far as allegations are concerned, the alleged incident has not taken place within the public view. Moreover, mere reference of the caste is not sufficient and to attract the provisions of the Act of 1989, the learned Trial Court has erroneously considered that there is bar under Section 18-A of the Act of 1989 and rejected the application. In fact, the Hon'ble Apex Court in catena of decisions held that though there is bar to grant anticipatory bail, bail can be granted in appropriate circumstances with cautious exercise of powers. In spite of decision of the Hon'ble Apex Court, the application for grant of bail is rejected by the Trial Court which is erroneous and therefore, the order passed by the Trial Court deserves to be set aside. She further submitted that custodial interrogation of the appellant is not required. In view of that also, appeal deserves to be allowed.

7. Learned APP for State and learned counsel for respondent No.2 strongly opposed the application on the ground that there is specific allegation against the present appellant that

though the present appellant knows about the caste of informant within the public view subjected him for insult and humiliation and thereby provisions of Atrocities Act are attracted. There is bar under Section 18-A and therefore, application for anticipatory bail is not maintainable and submitted that the appeal is devoid of merit and deserves to be dismissed.

8. After hearing learned counsel for the appellant, learned APP for the State and learned counsel for the victim, perused the investigation papers as well as order of the Trial Court. In the impugned order, the Trial Court rejected the application as there is bar under Section 18-A. As far as bar is concerned, the Full Bench of Rajasthan High Court in the case of Virendra Singh Vrs. State of Rajasthan, reported in 2000 Criminal Law Journal 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. It is further held that what is intended to be

emphasized is that while dealing with an 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 FIR or the complaint, the Courts would not be justified in entering into a further enquiry 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 exercise is intended to put a complete bar against entertainment of application of anticipatory bail which is unambiguously laid down under Section 18 which is apparent from the perusal of the Section itself and thus, the Court at the most would be required to evaluate the FIR itself with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of the ingredients constituting the alleged offence. This Court has also dealt with this issue in Ratnakala Martandrao Mohite Vrs. The State of Maharashtra and another, reported in 2020 ALL MR (Cri.) 334, Navnath s/o Dalsing Rathod @ Aade and others Vrs. State of Maharashtra in Criminal Appeal No.968/2018 decided on 25/04/2019 and Jagdish Sajjankumar Banka Vrs. The State of Maharashtra and another, reported in

2023 ALL MR (Cri.) 2911 wherein by referring the Judgment of the Full Bench of the Rajasthan High Court, it is held that the issue of applicability of Section 18 of the Act of 1989 elaborately held that provisions of Section 18 as well as newly amended Section 18-A create bar for exercising jurisdiction under Section 438 Code of Criminal Procedure. However, it would not preclude the concerned Court from examination of allegations made in the FIR on its face value. In case of Vilas Pandurang Pawar and another Vrs. State of Maharashtra and others, reported in 2012 All MR (Cri.) 3743 wherein the Hon'ble Apex Court held that no Court shall entertain the application for anticipatory bail in the offence registered under the provisions of the Act of 1989 unless it prima facie finds that such offence is made out. Similar principles are also laid down by this Court.

9. In the light of the above well settled principles laid down by the Hon'ble Apex Court and by this Court, the issue of applicability of Section 18 of the Act of 1989 which elaborately held that the provisions of Section 18 as well as newly amended Section 18-A of the Act of 1989 create a bar for exercising jurisdiction under Section 438 of the Code of Criminal Procedure. However, it will not preclude the concerned Court from examination of allegations made in the FIR on its face value to

determine whether prima facie case is made out or not.

10. After perusal of the FIR lodged against the present appellant, it reveals that the allegation against present appellant is that he has referred the caste of the informant and abused him. As far as abuses are concerned, which are not specifically narrated by the informant in the FIR. The basic ingredients of Section 3(1)(r)(s) are that there must be "intentional insults" with intent to humiliate a member of the Scheduled Caste or Scheduled Tribe in any place within a public view. Merely calling a person by his caste though may amount to insult or abuse him, it cannot be said to be with intent to humiliate such persons. The allegation against present appellant is that he called the informant by his caste. He has stated in the FIR the mode and manner in which appellant had insulted or humiliated being member of Scheduled Caste. Thus, as observed earlier, mere referring of the caste is not sufficient to attract the provisions, but there must be intention to insult or abuse. From the recitals of the FIR, it nowhere reveals that there was any intention to abuse or insult or humiliate such person. Considering the same, the bar under Section 18-A is not attracted and therefore, the application for grant of anticipatory bail is maintainable. The learned Trial Court though referred the Judgment of the Hon'ble Apex Court in the case of **Prathvi Raj**

Chauhan Vrs. Union of India and others, reported in **(2020) 4 SCC 727**. However, rejected the application. The Hon'ble Apex Court in the said Judgment held that however, where prima facie case is not made out, anticipatory bail can be granted in appropriate circumstances with cautious exercise of powers. Admittedly, there are no specific abuses narrated by the present appellant. Admittedly, informant has not stated the exact abuses which are uttered by the present appellant. Mere reference of caste is not sufficient to attract the provisions of Atrocities Act. In view of that, order passed by learned Trial Court rejecting the anticipatory bail application deserves to be set aside. In view of that, I proceed to pass the following order :--

ORDER

- i] The appeal is allowed.
- ii] The order passed by Additional Sessions Judge, Pusa, Dist. Yavatmal in Criminal Bail Application No.359/2023 is quashed and set aside.
- iii] The appellant - **Swapnil Ramesh Pawar** be released on anticipatory bail, in the event of his arrest in connection with Crime No.667/2023 registered under Sections 323, 504 and 506 of the Indian Penal Code 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 P. R. Bond of Rs.25,000/- with one solvent surety of the like amount.

iv] The appellant shall attend concerned Police Station as and when required for the investigation purpose and shall co-operate with the Investigating Agency.

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

11. The appeal is disposed of.

[URMILA JOSHI-PHALKE, J.]