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

**CRIMINAL APPEAL NO.599 OF 2024**

Mohammad Shahabaj Mohammad Akil,  
Aged about 35 Years,  
Occupation : Labour,  
R/o Diwan Nagar, Digras,  
Tahsil Digras, District Yavatmal. .... **APPELLANT**

**// VERSUS //**

1. State of Maharashtra,  
through Police Station Officer,  
Digras Police Station,  
Tahsil Digras, District Yavatmal.
2. Ganesh Nagorao Ingale,  
Aged about 35 Years,  
R/o. Nimba, Taluka Digras,  
District Yavatmal. .... **RESPONDENTS**

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Mr. Jafar Ali A. Malnas, Counsel for the appellant.  
Mr. S. V. Narale, APP for respondent No.1/State.  
Ms. Shreya H. Bhagat, appointed Counsel for respondent  
No.2.  
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**CORAM : URMILA JOSHI-PHALKE, J.**  
**DATED : 04.12.2024**

**ORAL JUDGMENT :**

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

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3. By this appeal, the present appellant has challenged the order passed by the learned Special Judge, Darwha, by which the application for grant of anticipatory bail of the present appellant in Criminal Bail Application No.172/2024 is rejected.

4. The Crime is registered on the basis of report lodged by the informant – Ganesh Nagorao Ingle, aged 40 years, on an allegation that on 03/09/2024, at about 10.00 p.m., when he was returning to his home, by having Dev Darshan, at the relevant time, present appellant abused him on his caste in a filthy language and also hold his hand and assaulted him by fist and kick blows and slaps, due to the old dispute between them. On the basis of the said report, police have registered the crime against the present appellant.

5. After registration of the crime, the appellant approached to the learned Special Court for grant of bail, in the event of his arrest. But the learned Special Court has rejected the application in view of the bar under Section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'the Act of 1989'). Being aggrieved and dissatisfied the same, present appeal is preferred by the appellant.

6. Heard learned Counsel for the appellant, who submitted that as far as the allegations are concerned, only reference of the caste is in the recitals of the FIR, which is not sufficient to attract

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the provisions of the Atrocities Act. He further submitted that, considering the allegation leveled against him, no offence is made out under the provisions of the Atrocities Act and therefore, the appellant be protected by granting anticipatory bail.

7. The learned APP for the State and learned appointed Counsel for the respondent No.2 strongly opposed the said prayer and submitted that the informant was abused in a filthy language with intent to humiliate him. In view of bar under Section 18 of the Act of 1989, the application is rightly rejected by the learned Special Court and therefore, no interference is called for.

8. After hearing the learned Counsel for the appellant and learned APP for the State and learned appointed Counsel for the respondent No.2, perused the recitals of the FIR, from which it reveals that prior to lodging the FIR, 3 to 4 months ago, there was a dash by the vehicle of the present informant to the present appellant, and since then, they were not on talking terms. Allegedly, on 03/04/2024, the present appellant has abused him in filthy language, as well as on the caste. On perusal of the recitals of the FIR, it reveals that only there is a reference of the caste, and the allegation that he was abused on the caste appears to be absent there. It is well settled that mere reference of the caste is not sufficient to attract the provisions of the Atrocities Act, and when

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the *prima facie* case is not made out from the recitals of the FIR, the application for anticipatory bail can be entertained.

9. This aspect is recently considered 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**, and it is 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. Thus, the reason laid down by the Hon'ble Apex Court is that the offence under Section 3(1)(r) of the Act, 1989 is established when there is an intentional insult or humiliation of a member belongs to the Scheduled Caste. In other words, 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 not attract Section 3(1)(r) of the Act, 1989. Considering the allegations, at this stage, the appellant has made out a case for grant of anticipatory bail, in view of that, I proceed to pass following order:

**ORDER**

- (i) The appeal is allowed.
- (ii) The order passed by the learned Special Judge, Darwha, in Criminal Bail Application No.172/2024 is hereby quashed and set aside.

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(iii) In the event of arrest, the appellant **Mohammad Shahabaj Mohammad Akil** shall be released on anticipatory bail, in connection with crime No.521/2024 registered with Police Station, Digras, District Yavatmal for the offences punishable under Sections 115(2), 296, 351(2) and 352 of the Bharatiya Nyaya Sanhita, 2023 and Sections 3(1)(r), 3(1)(s) 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 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, till filing of the charge-sheet.

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

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

11. The appeal is disposed of.

**(URMILA JOSHI-PHALKE, J.)**