



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

CRIMINAL APPEAL NO.708 OF 2023

1] Vaishali w/o Sanjay Kalore,
Aged about 42 years,
Occupation-Household work.

2] Roshni d/o Sanjay Kalore,
Aged about 19 years,
Occupation-Education.

Both R/o. Warud, Tah. Shegaon,
District-Buldhana.

.. Appellants

.. Versus ..

1] State of Maharashtra,
Through its Police Station Officer,
Police Station Khamgaon (Rural),
Tah. Khamgaon, District-Buldhana.

2] Swapnil s/o Sadanand Bhojane,
Aged about 27 years,
Occupation -
R/o. Warud (Shegaon), Tah. Khamgaon,
(Rural), District-Buldhana.

.. Respondents

.....
Shri N.R. Tekade, Advocate for the Appellants,
Shri A.G. Mate, APP for the Respondent No.1-State,
Mrs Kirti Deshpande, Advocate (Appointed) for Respondent No.2.
.....

CORAM : URMILA JOSHI-PHALKE, J.

DATED : FEBRUARY 05, 2024.

ORAL JUDGMENT :

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

2. **ADMIT.**

3. By this appeal, the appellants have challenged the order dated 10.10.2023 passed by the learned Special Judge, Khamgaon, District-Buldhana under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'Act of 1989') in Special Case No.82/2023 below Exh.3, by which the anticipatory bail application of the appellants is rejected.

4. Being aggrieved and dissatisfied with the order passed by the Special Court, the present appeal is preferred by the appellants on the ground that the appellants apprehending their arrest at the hands of the police in connection with Crime No.192/2023 registered at Police Station Khamgaon (Rural), District - Buldhana under Sections 143, 146, 147, 148, 452, 324, 294, 504, 506 of the Indian Penal Code, 1860 and Sections 3 (1)(r), 3 (2)(v-a) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

5. The appellants preferred an application for grant of anticipatory bail on the ground that one Swapnil Sadanand Bhojne has lodged the report against them alleging that on 27.5.2023 at about 9.45 am, when he was present in the house, present appellants along with other co-accused entered in his house and abused him on his caste and also assaulted him by means of kick and fists. On the basis of the said report, police have registered the crime against the present appellants. In fact, the first allegations are levelled against the present appellants are that crime is registered against the informant on the basis of the report lodged by appellant no.2, wherein she has alleged that the present appellants has outraged her modesty and also subjected her for forceful sexual intercourse. The said first information report was lodged prior to this incident on 1.2.2023 and to give counter blast to the said first information report, this false report is filed against the appellants. The appellant no.1 has also filed one complaint against the informant under Sections 354, 354-A, 324, 294, 500, 504 and 506 read with Section 34 of the Indian Penal Code and to give counter blast to the said complaint, this false first information report was lodged.

6. The learned counsel for the appellants Shri N.R. Tekade submitted that the trial court had not considered these aspects and wrongly rejected the application for grant of anticipatory bail observing

that the bar under Section 18 of the Act of 1989 is attracted and the anticipatory bail application is not maintainable. He submitted that in fact from the recitals of the first information report there were no allegation that the present appellants have abused the informant on his caste. Said allegations were made subsequently on 29.5.2023 by producing the caste certificate. As far as the allegations regarding the abuses on caste are concerned, which is general allegations and no specific role is attributed to the present appellants, showing that they have used the abusive words against the informant to insult or humiliate them. Thus, the bar under Section 18 Act of 1989 is not attracted. In view of that, the order passed by the learned trial court deserves to be set aside and quashed.

7. In support of his contentions, he placed reliance on the order passed by this Court in *Criminal Appeal No.670/2023 (Sarang Manohar Shende .vs. State of Maharashtra and one) and Ajinkya s/o Chandrashekhar Ghogare .vs. State of Maharashtra and another, reported in 2023 ALL MR (Cri) 2868*.

8. Per contra, learned APP Shri A.G. Mate for respondent no.1-State, strongly opposed the appeal on the ground that there is a specific bar under Section 18 of the Act of 1989 to entertain the application. The recitals of the first information report shows that both

the appellants have abused the informant on his caste and also assaulted him. In view of that, the trial court has rightly rejected the application and no grounds are made out to interfere with the same. Thus, the appeal is devoid of merits and liable to be dismissed.

9. The learned counsel Mrs. Kirti Deshpande for the respondent no.2 endorsed the same contentions and submitted that there is a specific allegation against the present appellants which shows that the offence under Sections 143, 146, 147, 148, 452, 324, 294, 504, 506 of the Indian Penal Code, 1860 and Sections 3 (1)(r), 3 (2)(v-a) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 is made out against the present appellants, therefore, the bar under Section 18 of the Act of 1989 came into play and the application is not maintainable.

10. While considering the bar under section 18 of the Act of 1989 and considering the maintainability of the application, it is necessary to refer the settled law in view of the judgment of the Rajasthan High Court. The full bench of Rajasthan High Court in the case of *Virendra Singh v. State of Rajasthan 2000 CRI. L. J. 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 a 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. 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 inquiry 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 an exercise in our view is intended to put to a complete bar against entertainment of application of anticipatory bail which is unambiguously laid down under section 18 of the Act of 1989, 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. The

full bench of Rajasthan High Court further considered that it has to be borne in mind that if a person is even alleged of accusation of committing an offence under the S.C. S.T. 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 held that from the FIR itself the ingredients of the offence as laid down under section 3 of the Act itself is to be ascertain the bar created by section 18 would not be allowed to operate against an accused and only in that event his application for anticipatory bail would be dealt with by the concerned court to determine whether the Act of 1989 can be said to be rightly applicable against the accused any other interpretation, would go against the letter and spirit of the clear provision of section 18 of the Act of 1989 which has already stood the test of reasonableness and constitutional validity upto the level of the Apex Court.

11. The observation of the Rajasthan High Court are considered by this Court also in the case of (i) ***Ratnakala Martandrao Mohite v. The State of Maharashtra & Anr.*** 2020 ALL MR (Cri) 334, (ii)

Navnath s/o. Dalsing Rathod @ Aade and others v. State of Maharashtra Through Police Inspector Karmad Police Station, Aurangabad and another Law Finder Doc Id # 1486431, (iii) Jagdish Sajjankumar Banka v. State of Maharashtra and another 2023 SCC OnLine Bom 581. Thus, it is clear from the observation of the full bench of the Rajasthan High Court from which it reveals that if the court forms an opinion that there is such material, then bar under section 18 comes into play, if the material is not sufficient to make out *prima facie* case of commission of the offence punishable under the act against the acquittal the court is expected to consider the application as provided under section 438 of the Criminal Procedure Code.

12. After giving consideration to the rival submissions advanced on behalf of both the sides, I find it necessary to discuss the recitals of the first information report. Admittedly, in the recitals of the first information report, there is no specific allegation against the present appellants to show that they have abused on his caste. In fact, in the first information report there is no allegation that he was abused on his caste. In subsequent statement on 29.5.2023, he came along with the case that he was abused on his caste, but he has not stated the specific words which are used by the present appellants. In fact, it is a general allegations made against all the appellants.

13. It is specifically observed by the Full Bench of the Rajasthan High Court, which subsequently considered by this court also that while considering the allegations the allegation in the FIR are to be taken into consideration and not the subsequent statements. The observation of the Rajasthan High Court shows that the application for grant of anticipatory bail can be entertained only on the ground of inapplicability of provisions of the Act of 1989 due to the facts of the case which can be gathered only from the FIR and not beyond that because once it is gathered from the FIR that the applicant is an accused of committing an offence laid down under section 3 of the Act of 1989, the bar of section 18 would instantly operate against the person who has been made an accused of the offence under the Act of 1989. To put it differently, once it is apparent from the FIR that an offence under the Act of 1989 is even alleged, the courts would not be justified at all in weighing or scrutinizing the preponderance of the probability of commission of the offence by the accused, but if from the FIR itself the ingredients of offence as laid down under section 3 of the Act itself is found to be missing, the bar created by section 18 would not be allowed to operate against an accused and only in that event the application for anticipatory bail would be dealt with by the concerned court.

14. Considering the above observations and over all factual circumstances, I am of the opinion that despite the bar under section 18 and 18-A of the Act of 1989 for invocation of the powers under section 438 of the Code of Criminal Procedure, it is still open to this court to find out by looking to the FIR of the case itself as to whether the *prima facie* case is made out against the present appellants. The recitals of the FIR are only to the extent that all the accused have abused him on his caste. The sweeping and ominous allegation are made in the FIR appears to be based on whole perception of the first informant complainant and it would not match with the very ingredients of section 3(1)(r) (s) of the Act of 1989. In view of that the appeal deserves to be allowed. Accordingly, I proceed to pass following order :

ORDER

(i) The impugned order rejecting the bail application passed by the Special Court, Khamgaon dated 10.10.2023 in Special Case No.82/2023 below Exh.3 is quashed and set aside. The application of the appellants filed under section 438 of the Code of Criminal Procedure for pre-arrest bail is allowed. The appellants are released on anticipatory bail in the event of their arrest in connection with Crime No.192/2023 registered under Sections 143, 146, 147, 148,

452, 324, 294, 504, 506 of the Indian Penal Code, 1860 and Sections 3(1)(r), 3(2)(v-a) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, on executing of the P. R. bond in the sum of Rs.20,000/- each with one solvent surety in the like amount.

(ii) The appellants shall attend the Police Station as and when required for the purpose of investigation and shall cooperate with the investigating agency.

(iii) The appellants shall furnish their mobile numbers and address along with his address proof.

(iv) The appellants shall not induce, threat or promise any witnesses who are connected with the alleged crime.

(v) The fees of the learned counsel appointed for respondent no.2 be quantified as per the rules.

Criminal Appeal is allowed accordingly.

(URMILA JOSHI-PHALKE, J.)