



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

CRIMINAL APPEAL NO.629 OF 2024

Kajjum s/o Kareem Quereshi
Age 43 years,
Occupation – Journalist,
R/o Gurudeo Ward, Ghatanji,
Tq. Ghatanji, District Yavatmal

...APPELLANT

VERSUS

1. State of Maharashtra,
through P.S.O. Ghatanji,
Yavatmal,
Tq. and District Yavatmal
2. Vilas s/o Govindrao Siddam
Aged – 58 years,
Occupation – Retd. Police Sub-Inspector,
R/o. Police Quarter,
Ghatanji, District Yavatmal

...RESPONDENTS

Mr. M.V. Rai, Advocate for the appellant.
Ms K. Bhondge, APP for the State.
Mr. S. Bhalerao, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : NOVEMBER 22, 2024.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel
for the parties.

2. By preferring this appeal under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act of 1989'), the appellant has challenged the order dated 22/10/2024 passed by the learned Additional Sessions Judge, Yavatmal, District Yavatmal in Criminal Bail Application No.443/2024 by which the application of the present appellant for grant of anticipatory bail was rejected.

3. The appellant is apprehending arrest at the hands of police in connection with Crime No.834/2024 registered with police station Ghatanji, District Yavatmal for the offence punishable under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 308(2) of the Bharatiya Nyaya Sanhita, 2023. The crime is registered on the basis of the report lodged by the informant who belongs to the "Gond" community and retired as a Police Sub-Inspector whereas the appellant is a Journalist attached with the print media. The informant who belongs to the Scheduled Tribe and retired from the Service had occupied the government quarter. On 17/09/2024, when the informant was returning in the evening time from his field, the appellant who was standing in front of police station communicated with the informant and demanded from him Rs.15,000/- on a pretext that if the amount is not paid he would publish the news against him in the newspaper as regards his

occupation of the government quarter is concerned. As the informant got scared, he gave him Rs.2000/- but again on 19/09/2024 news was flashed in WhatsApp group regarding the informant. On 29/09/2024, when informant was returning to his house and came in front of Patrakar Office the appellant was standing there and it is alleged that the appellant has abused him on his caste in a filthy language within the public view. He lowered down his image by raising filthy words upon his caste. On the basis of the said report, police have registered the crime against the present appellant. After registration of the crime, the appellant approached to the Special Court for grant of anticipatory bail; however, learned Special Court has rejected the application in view of bar under Section 18 of the Atrocities Act.

4. Being aggrieved with the same, present appeal is preferred by the appellant on the ground that no *prima facie* case is made out against the present appellant. In fact, it was the present appellant who made the grievances against the informant, and therefore, after thought after 11 days of the incident the FIR came to be lodged. It is submitted by the learned Counsel that there is no explanation for the delay in lodging the FIR. Moreover, only to give the gravity to the alleged incident, the allegation regarding the abuses on the caste are levelled. It is submitted that as far as bar under Section 18 of the Atrocities Act is

concerned which is not attracted as no *prima facie* case is made out. The allegations are to be considered in the light of the circumstances that it was the present appellant who has made complaint earlier and to give a counter blast to the said complaint, this false FIR is lodged. As far as the custodial interrogation is concerned which is not required. In view of that, the appeal deserves to be allowed. He further submitted that the appellant is a Journalist who has published the news regarding the illegal activities of the informant and being aggrieved with the same, the present FIR is lodged.

5. *Per contra*, learned APP strongly opposed the appeal on the ground that despite the notice issued under Section 35(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023, the appellant has not cooperated with the investigating agency and has not attended the police station. She further submitted that immediately on the day of incident, the informant has filed complaint application before the police; however, no action was taken, and therefore, the informant constrained to lodge the FIR against the present appellant. She further submitted that there are criminal antecedents against the present appellant which are to be taken into consideration. The language which is used by the appellant is a filthy language which specifically attributes that the appellant has abused, humiliated and insulted the informant on his

caste. Considering the same, the bar under Section 18 is attracted, and therefore, the appeal being devoid of merits deserves to be dismissed.

6. Learned Counsel for the informant endorsed the same contention and submitted that as far as the allegations against the present appellant are concerned specifically attributes the bar under Section 18 and in view of the bar under Section 18, the appeal deserves to be dismissed.

7. I have heard learned Counsel for both the parties. Perused the investigation papers from which it reveals that there is no dispute as to the fact that the appellant is working as a Journalist and the informant is retired Police Officer. The documents filed on record sufficiently shows that some news were published against the informant. As far as the alleged incident is concerned admittedly, the FIR is lodged on 01/10/2024. Prior to that, the informant has filed an application as well as the appellant has also filed an application regarding the said incident. The counter allegations are levelled by them against each other from which it is apparent that there was a previous dispute between both of them. The documents filed on record sufficiently shows that the appellant has published some news as far as the law and order position is concerned regarding the area wherein the present informant was deputed as Police Officer. Thus, there was some grievances against each

other and out of that the FIR appears to be lodged. After perusal of the FIR admittedly the wordings used in the FIR shows the filthy language but whether really the said incident has occurred or not is a matter of investigation. At this stage, there is no dispute as to the fact that the FIR is lodged by the present informant after 11 days of the incident. The recitals of the FIR wherein the alleged abused are alleged are not substantiated by the other witnesses. The witnesses namely Vijay Shyam Chavhan and Rahul Suresh Gaikwad though supports the incident but it is only to the extent that there was a reference of the caste while referring the informant.

8. 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.

9. The Hon'ble Apex Court has dealt with this aspect in the recent judgment in *Shajan Skaria Vs. The State Of Kerala & anr. in Criminal Appeal No.2622 of 2024 (arising out of SLP (CRL.) No.8081 of 2023) decided on 23/08/2024* wherein 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. By referring the judgment of the *Hitesh Verma Vs. State of Uttarakhand [(2020) 10 SCC 710]* and *State of Madhya Pradesh v. Ram Krishna Balothia [(1995) 3 SCC 221]* the Hon'ble Apex Court considered the purport of the Act, 1989 and held that it is not the purport of the Act, 1989 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. On the contrary, 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. We say so 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. It is further held by the Hon'ble Apex Court that the term 'humiliation' as it appears in Section 3(1)(r) of the Act, 1989 must be construed, that is, in a way that it deprecates the infliction of humiliation against members of the Scheduled Castes and Scheduled Tribes wherein such humiliation is intricately associated with the caste identity of such members. It is clear from a plain reading of the aforesaid provision that any insult against a member of a Scheduled Caste or Scheduled Tribe on the ground of "untouchability" was punishable with imprisonment for a maximum term of six months under the Civil Rights Act. With the passage of time, it was realised by the legislature that the Civil Rights Act was not adequately sufficient to tackle caste-based offences, and therefore, with more stringent provisions for combating such practices the Act, 1989 was enacted. It is further held that every insult or humiliation is not covered to attract the provisions of the Scheduled Caste or Scheduled Tribes (Prevention of Atrocities) Act, 1989. The words in Section 3(1)(r) of the Act, 1989 are altogether different. Mere knowledge of the fact that the victim is a member of the Scheduled Caste or Scheduled Tribe is not sufficient to attract Section 3(1)(r) of the Act, 1989. The offence must have been committed against the person on the

ground or for the reason that such person is a member of Scheduled Caste or Scheduled Tribe.

11. In the light of the above observations, if the facts of the present case are taken into consideration admittedly, there were disputes prior to the incident. The allegations appears to be levelled after thought and no explanation is for the delay in lodging of the FIR. There appears that the present appellant has published some news against the informant and the possibility that the accused is implicated due to the said reason cannot be ruled out. At this stage, considering all these aspects, the bar under Section 18 of the Atrocities Act will not attract, and therefore, the appeal deserves to be allowed. Accordingly, I proceed to pass following order:

- (i) The appeal is allowed.
- (ii) The order dated 22/10/2024 passed by the Additional Sessions Judge, Yavatmal, District Yavatmal in Criminal Bail Application No.443/2024, is hereby quashed and set aside.
- (iii) In the event of arrest, the appellant - Kajjum s/o Kareem Quereshi in connection with Crime No.834/2024 registered with police station Ghatanji, District Yavatmal for the offence punishable under Sections 3(1)(r), 3(1)(s), 3(2)

(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 308(2) of the Bharatiya Nyaya Sanhita, 2023, be released on anticipatory bail on executing P.R. 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 once in a week i.e. on every Sunday between 10.00 AM and 1.00 PM and shall cooperate with the investigating agency.

(v) The appellant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case either personally or by way of electronic media.

12. The appeal stands disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*