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

CRIMINAL APPEAL NO.638 OF 2024

1. Sharad Nanaji Sonavne,
Aged about 47 Years,
Occupation: Sanchalak Shrilaxmi Nagari
Sankari Pat Sanstha Limited Girgaon.
2. Sudhir Nandu Borkar,
Aged 29 Years,
Occupation : Farming.
3. Tinesh Diwakar Kothewar,
Aged about 31 Years,
Occupation : Farming.
4. Sandeep Kawdu Parvate,
Aged about 36 Years,
Occupation : Farming,
All R/o Ward No.1, Girgaon,
Tahsil Nagbhir, District Chandrapur.

.... APPELLANTS
(Original Applicants)

// VERSUS //

1. State of Maharashtra,
through Police Station Officer,
Talodhi, Taluka Nagbhir
District Chandrapur.
2. Sagar s/o Giridhar Khobragade,
Aged about 25 Years,
Occupation : Labour,
Resident of Girgaon,
Tahasil Nagbhid, District Chandrapur.

(Original Non-applicant)

(Original Complainant)
.... RESPONDENTS

Mr. S. Y. Deopujari, Counsel for the appellant.
Ms. H. N. Prabhu, APP for respondent No.1/State.
Mr. M. L. Chouhan, appointed Counsel for respondent
No.2.

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CORAM : URMILA JOSHI-PHALKE, J.
DATED : 09.12.2024

ORAL JUDGMENT :

1. **Admit.**

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

3. By preferring this appeal under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellants have challenged the order passed by the learned Additional Sessions Judge and Special Judge, Chandrapur in Anticipatory Bail Application No.640/2024 rejecting the application of the present appellants and hence this appeal.

4. The accusation against the present appellants is on the basis of report lodged by the informant Sagar Giridhar Khobragade on an allegation that the appellant belongs to the Kohali Community, whereas he belongs to the Mahar Community. On 04.10.2024 at about 11.00 p.m., he had been to Ambedkar Square, at that time, some people were sitting in front of the Pan Stall, at the relevant time, present appellant No.2 abused him on his caste and other appellants were also present there. They have also referred him by his caste as well as abused him in a filthy language

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and humiliated and insulted him. On the basis of the said report, police have registered the crime against the present appellants.

5. After registration of the crime, the appellants approached the learned Special Court for grant of anticipatory bail and the same was rejected, hence this appeal.

6. Heard learned Counsel Mr. Deopujari for the appellants who submitted that now the investigation is already completed and charge-sheet is filed, as far as the custodial interrogation is concerned, which is not required. He further submitted that mere reference of the caste is not sufficient to attract the provisions of the Atrocities Act and the omnibus allegation is levelled against all the appellants. There are no specific allegations against the present appellants and considering the same, in view of the general allegations levelled against the present appellants, the bar under Section 18-A of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act of 1989'), will not attract. He submitted that even accepting the allegations as it is, which is in the nature of the omnibus allegations and therefore, the appellants be protected by granting anticipatory bail.

7. Learned APP strongly opposed the said application and submitted that not only the abuses, but the informant's brother was manhandled by the present appellants and the informant's brother has sustained the injuries. The alleged incident has taken place

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within the public view and therefore, the bar under Section 18-A of the Act of 1989, will attract, in view of that the appeal deserves to be dismissed.

8. Learned appointed Counsel Mr. Chouhan for the respondent No.2 – informant also reiterated the said contentions and submitted that from the recitals of the FIR as well as the appeal memo, it is crystal clear that there were some altercations of the words and during that altercation, the informant was referred by his caste and not only referred by his caste, but he was abused in a filthy language and therefore, the bar under Section 18-A of the Act of 1989, will attract. In view of that, the application for anticipatory bail is not maintainable and therefore, the appeal deserves to be dismissed.

9. After hearing the learned Counsel for the appellants, learned APP for the State and learned appointed Counsel for the respondent No.2 and perused the recitals of the FIR as well as the investigation papers. From the recitals of the FIR, it reveals that when the informant was proceeding, at the relevant time, all the appellants abused him by referring to his caste and also assaulted his brother. As far as the assault is concerned, the injury sustained by his brother appears to be a simple injury. The statements of the various witnesses are recorded which are also to the extent of all the appellants have abused the informant and his brother. Thus,

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the general allegations and the omnibus allegations appears against all the appellants. As far as the application of the provisions of the Atrocities Act are concerned, which are recently dealt 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** wherein the aspect of the bar under Section 18-A of the Act of 1989 is considered by the Hon'ble Apex Court 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. Considering the basic ingredients to constitute the offence under Section 3(1)(r) of the Act, 1989 which 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.*

10. The object behind the said provision is also discussed by the Hon'ble Apex Court and it is held that "The words "with intent to humiliate" as they appear in the text of Section 3(1)(r) of the Act, 1989 are inextricably linked to the caste identity of the person who

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is subjected to intentional insult or intimidation. Not every intentional insult or intimidation of a member of a SC/ST community will result into a feeling of caste-based humiliation. It is only in those cases where the intentional insult or intimidation takes place either due to the prevailing practice of untouchability or to reinforce the historically entrenched ideas like the superiority of the "upper castes" over the "lower castes/untouchables", the notions of 'purity' and 'pollution', etc. that it could be said to be an insult or intimidation of the type envisaged by the Act, 1989." By referring various its earlier decision it was held that "In our considered view, it is in a similar vein 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.

11. Thus, considering the observations of the Hon'ble Apex Court as well as the facts of the present case, admittedly there are omnibus allegations against all the appellants. Mere knowledge of the fact that the victim is a member of the Scheduled Caste or the Scheduled Tribe is not sufficient to attract Section 3(1)(r) of the Act. As discussed earlier, the offence must have been committed against the person on the ground or for the reason that such person

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is a member of the Scheduled Caste or the Scheduled Tribe. Considering the fact that the investigation is completed, there is omnibus allegations and to the extent of reference of the caste, the appellants have made out a case for grant of bail. In view of that, the appeal deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The appeal is allowed.
- (ii) The order dated 24.10.2024 passed by the learned Special Court in Anticipatory Bail Application No.640/2024 is hereby quashed and set aside.
- (iii) The appellant **No.(1) Sharad Nanaji Sonavne, No.(2) Sudhir Nandu Borkar, No.(3) Tinesh Diwakar Kothewar and No.(4) Sandeep Kawdu Parvate** shall be released on anticipatory bail in the event of arrest, in connection with Crime No.158/2024 registered with Police Station, Talodhi, District Chandrapur for the offences punishable under Sections 296(b), 115(2), 3(5) of the Bharatiya Nyaya Sanhita, 2023 and under Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, on executing PR Bond in the sum of Rs.25,000/- each with one solvent surety in the like amount.
- (iv) The appellants shall attend the concerned Police Station as and when required for the investigation purpose and shall cooperate with the investigating agency.
- (v) The Investigating Officer shall issue eight days' notice in advance whenever the presence of the present appellants is required for the investigation purpose.

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

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

13. The appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate.