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

CRIMINAL APPEAL NO.639 OF 2024

Harish Ganesh Jangam,
Aged about 26 Years,
Occupation : Labour,
R/o. Deshmukh Fail, Akola,
Taluka and District Akola.

.... APPELLANT

// VERSUS //

1. State of Maharashtra,
through Police Station Officer,
Police Station, Ramdaspath Akola.

2. Smt. Rekha Suresh Telgote,
Aged 44 Years,
Occupation: Private Job,
R/o Shraddha Nagar -III
Kaulkhed Akola,
District Akola.

.... RESPONDENTS

Mr. K. H. Anandani, Counsel for the appellant.
Mr. H. D. Dubey, APP for respondent No.1/State.
Ms. Kirti Deshpande, appointed Counsel for respondent
No.2.

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.

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3. By preferring this appeal, the appellant has challenged the order dated 23.10.2024 passed by the learned Special Judge and Additional Sessions Judge, Akola by which the application of the present appellant for grant of anticipatory bail is rejected.

4. The appellant is arraigned as an accused in connection with Crime No.164/2024 registered with Police Station, Ramdaspath, Akola for the offences punishable under Sections 143, 147, 148, 307, 326, 324, 294, 504, 506 read with Section Section 149 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act of 1989') on an allegation that there was a love affair between one Yogini and the injured and said love affair was opposed by the co-accused. On that count, on 12.04.2024 when the injured had been to the market was assaulted by the present appellant as well as the other co-accused by means of wooden stick and fighter. Due to which he sustained grievous injuries. On the basis of the said report, police have registered the crime against the present appellant and the other co-accused.

5. After registration of the crime, the appellant approached to the learned Special Court for grant of bail, however the learned Special Court has rejected the application, observing that there is a

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bar under Section 18-A of the Act of 1989 and there is a *prima facie* case made out against the present appellant, hence this appeal.

6. Heard learned Counsel for the appellant who submitted that there is a mistaken identity as far as the present appellant is concerned, the name of the present appellant is mentioned as Harish Ganesh Jangam, whereas the name of the father of the present appellant is Fakira. Thus, the name mentioned in the First Information Report is not of the present appellant, but of some other person. As far as the present appellant is concerned, he is not involved in the said crime. No overt act is attributed to him and there is a general allegation against him. Considering the same, his custodial interrogation is not required. There is no allegation that he has either abused or assaulted the person who belongs to the Scheduled Caste and therefore, the appellant be protected by granting anticipatory bail. In support of his contention he placed reliance on the order passed by this Court in **Criminal Appeal No.217/2024 [Abhishek s/o Ravindra Raut Vs. State of Maharashtra and another] decided on 15.07.2024** and **Anticipatory Bail Application Nos.2133/2018 [Shivaji Eknath Fokane vs. The State of Maharashtra] with Anticipatory Bail Application No.2134/2018 [Ravindra Shivaji Fokane Vs. The State of Maharashtra] dated 19.06.2019** passed at Principal Seat.

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7. Per contra, learned APP for the State and learned Counsel for the respondent No.2 strongly opposed the said appeal and submitted that the statement of the injured specifically shows the specific role attributed to the present appellant. The injured has sustained the grievous injuries like head injury and multiple fractures due to the assault by the present appellant and other co-accused. Considering the specific role attributed to the present appellant, the application is rightly rejected by the learned Special Court and the appeal deserves to be dismissed in view of the bar under Section 18-A of the Act of 1989.

8. After hearing both sides and on perusal of the investigation papers, it reveals that the alleged incident has taken place due to the love affair between the injured and the one Yogini. The same love affair was opposed by the present appellant and the other co-accused and on that count, the injured was assaulted by them. As far as the present appellant is concerned, the statement of the injured specifically shows that the present appellant namely Harish Jangam was present holding fighter in his hand and assaulted him. The injury certificate shows that multiple fractures are sustained by the injured. As far as the contention of the learned Counsel to the extent that there is a mistaken identity is concerned, the statement of the injured specifically shows the name of the present appellant and the role attributed to him. Thus,

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considering the same, the learned Special Court has rightly rejected the application in view of bar under Section 18-A of the Act of 1989. The bar under Section 18-A of the Act of 1989 is considered recently 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**. Thus, considering the specific role attributed to the present appellant and the weapon which is attributed to the present appellant, the multiple fracture injuries sustained by the injured and the statements of various witnesses *prima facie* case is made out and as there is a *prima facie* case, the bar under Section 18-A of the Act of 1989 will attract. In view of that the appeal deserves to be dismissed. Accordingly, I proceed to pass following order:

ORDER

1. The appeal is dismissed.
2. The fees of the appointed Counsel be quantified as per rules.

(URMILA JOSHI-PHALKE, J.)