



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

**CRIMINAL APPEAL NO.792 OF 2023**

Sachin s/o Tryambakrao Hade  
Aged about 39 years,  
Occupation – Labour,  
R/o. Deori Nipani,  
Tq. Bhatkuli, District Amravati

**...APPELLANT**

**VERSUS**

1. State of Maharashtra,  
through Police Station Officer,  
Police Station Walgaon,  
Tq. and District Amravati
2. Sarita Krishnarao Ukey  
Aged about 50 years,  
Occupation – Household,  
R/o. Deori Nipani, Walgaon,  
Tq. Bhatkuli, District Amravati

**...RESPONDENTS**

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Mr. A.M. Chandekar, Advocate for the appellant.  
Mrs. H.S. Dhande, APP for the State.  
Ms Radha Mishra, Advocate (appointed) for respondent No.2.

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**CORAM : URMILA JOSHI-PHALKE, J.**

**DATED : MARCH 05, 2024.**

**ORAL JUDGMENT :**

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

2. By preparing this appeal, the appellant has challenged the order passed by the Special Judge and Additional Sessions Judge-2, Amravati in Criminal Bail Application No.1214 of 2023.

3. The appellant is apprehending arrest at the hands of police in connection with Crime No.294 of 2023 registered at police station Walgaon, Tq. Bhatkuli, District Amravati for the offence punishable under Section 294 and 295 of the Indian Penal Code read with Section 3(1)(r), 3(1)(s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred as 'the Atrocities Act' for short).

4. The accusation against the present appellant is on the basis of report lodged by one Sarita Krushnarao Ukey on an allegation that on 10/09/2023 at about 8:30 p.m. when she along with other ladies of the village were praying in Buddha Vihar, at that time present applicant came outside the Buddha Vihar and started abusing. He was under the influence of liquor and they were abused on their caste and in a filthy language. The appellant has also pelted the cow dung on the Buddha Vihar and humiliated and insulted them. On the basis of said report police have registered the crime against the present appellant.

5. As the appellant was apprehending arrest at the hands of police, he approached to the Sessions Court by filling criminal bail application for grant of anticipatory bail which was rejected by passing order on 26/10/2023.

6. Being aggrieved and dissatisfied with the same, present appeal is preferred by the appellant on the ground that learned trial Court has erroneously held that there is a bar under Section 18 of the Atrocities Act to entertain the application for anticipatory bail. It is further submitted by the learned Counsel for the appellant that the learned trial Court has not considered that the possibility of false implication is there on the basis of the various documents which are filed on record. He invited my attention towards the FIR lodged by the present appellant against the son of the informant namely Vikas Ukey alleging that on 10/09/2023 at about 8:00 p.m. when the appellant was present at Dahihandi festival at that time Shubham Ukey met him and abused him and also threatened him. Thereafter he reached at about 8:30 p.m. near the village at that time son of the informant and other persons of the same community came near to him and threatened him why he has removed the encroachment and assaulted him by fists and kick blows.

7. Learned Counsel for the applicant submitted that previously also present appellant has filed one NCR against the son of the informant. He also invited my attention towards one application which is filed by the villagers alleging that present appellant is implicated falsely as he has removed the encroachment in the village. He submitted that, that is the reason to implicate the present appellant falsely after the present appellant has lodged report against the son of the informant. As far as custodial interrogation of the present appellant is concerned which is not required. He submitted that even assuming the allegations as it is mere reference of the caste is not sufficient to attract the provisions of the Atrocities Act. In support of his contention, he placed reliance on ***N.B. Gungarakoppa and ors. Vs. State of Karnataka [2002 Cri.L.J. 3311]*** and submitted that the question raised before the Karnataka High Court was Whether the Courts entertaining the petitions under Section 438, Cr.P.C. can meticulously examine the material on record and attempt to find out a *prima facie* case under the provisions of the Act at this stage? He submitted that mere reference of the caste is not sufficient to attract the provisions of Atrocities Act especially the bar under Section 18A of the Atrocities Act. He submitted that now it is well settled that mere reference of the caste is not sufficient and moreover the anticipatory bail application can be entertained when there is no *prima facie* case made out. In view of that the appeal deserves to be allowed.

8. Learned Additional Public Prosecutor and learned Counsel for respondent No.2 vehemently submitted that the statements of the various witnesses and the recitals of the FIR shows that the informant and other ladies of the village were abused by the present appellant under the influence of liquor in a filthy language. Considering the same, the bar under Section 18A is attracted and the application for anticipatory bail is not maintainable. Learned Sessions Court has considered the same and rightly rejected the application. Hence, no interference is called for.

9. I have heard the learned Counsel for the parties. Perused the investigation papers. As far as the allegations are concerned which shows that the present appellant has referred their caste while abusing them. As far as the abuses are concerned which are not specifically mentioned in the FIR. The record which is filed on record by the learned Counsel for the appellant shows that regarding the same incident, appellant has also filed the FIR in which it is alleged that the son of the informant and other villagers have assaulted him, abused him on 10/09/2023 at about 8.30 p.m. on account of removing the encroachment from the village. The informant has narrated the same date and time of the present incident. Thus, there is a substance in the contention raised by the learned Counsel for the appellant. The

contention of the appellant is further substantiated by the application filed by the villagers which shows that as the appellant has removed the encroachment, and therefore, he is falsely implicated in the alleged offence. The said application is addressed to the Police Commissioner, Amravati City bears the signature of almost 33 villagers.

10. In the background of the above facts and circumstances, it is necessary to see whether the bar under Section 18 of the Atrocities Act is attracted to entertain the application of anticipatory bail. The Full Bench of the Rajasthan High Court in *Virendra Singh Vs. State of Rajasthan [2000 CRI.L.J.2899]* dealt with this issue and 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 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. 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 is intended to put a complete bar against entertainment of application of anticipatory bail which is unambiguously laid down under Section 18 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 there from taken at their face value disclosed the existence of the ingredients constituting the alleged offence. The same issue is dealt by this Court also in ***Ratnakala Martandrao Mohite Vs. The State of Maharashtra and anr. [2020 ALL MR (Cri) 334]***, ***Navnath s/o Dalsing Rathod @ Aade and ors. Vs. State of Maharashtra thr. Police Inspector Karmad Police Station, Aurangabad and anr. in Criminal Appeal No.968 of 2018 decided on 25.04.2019 and Jagdish Sajjankumar Banka Vs. State of Maharashtra and anr. [2023 ALL MR Cri. 2911]*** wherein by referring the judgment of the Full Bench of the Rajasthan High Court, it is held that the issue of applicability of Section 18 of the Act elaborately and held that the provisions of Section 18 as well as newly amended Section 18 of the Act of 1989 create a bar for exercising jurisdiction under Section 438 of the Cr.P.C. However, it

would not preclude the concerned Court from examination of allegations made in the FIR on its face value to determine whether *prima facie* case is made out or not. In ***Vilas Pandurang Pawar and anr. Vs. State of Maharashtra and ors. [2012 ALL MR (Cri.) 3743 (S.C.)]*** wherein the Hon'ble Apex Court held that no Court shall entertain application for anticipatory bail in the offence registered under the provisions of the Act of 1989, unless it *prima facie* finds that such an offence is made out. Similar principles also laid down by this Court. In such circumstances, it is evident that in spite of bar under Section 18 or 18A of the Act of 1989 for involving the powers under Section 438 of the Cr.P.C., it is still open to this Court to find out by looking into FIR as to whether *prima facie* case is made out by the complainant against the appellant. Thus, the application under Section 438 of the Cr.P.C. needs to be considered for ascertaining whether there is material to make out *prima facie* case for offence punishable under the Act of 1989.

11. The point of controversy in the present appeal is on the question of pre-arrest bail by exercising power under Section 438 of the Cr.P.C. The present appellant has preferred present appeal by resorting the remedy under Section 14-A(2) of the Atrocities Act, 1989 and submitted that *prima facie* case is not made, and therefore, bar under Section 18A is not attracted. The allegations against the present

appellant that he abused the informant and other ladies by referring their caste. It is well settled that mere reference of the caste is not sufficient to attract the provisions of Atrocities Act. In ***Shantabai Vs. State of Maharashtra [1982 Cri.L.J. 872]*** wherein it has been held that merely calling a person by his caste name though may amount to insult or abuse to him, it cannot be said to be with intent to humiliate such person.

12. After perusal of the recitals of the FIR and the relevant documents which filed on record by the learned Counsel of the appellant it is apparent that the present appellant has also lodged the FIR regarding the same incident which took place on the same date and at the same time. The allegation made by the present appellant in the FIR lodged by him is also substantiated by the application which is filed by various villagers which shows that the appellant is falsely implicated in the alleged offence. Considering the allegations made against the present appellant in the background of these circumstances and there is no specific abuses mentioned by the informant which would show that said abuses are uttered by the present appellant with intent to humiliate or insult the informant and other ladies within a public view. The allegations are to be considered in the background of the previous complaint lodged by the present appellant against the son of the

informant. Even accepting the allegations as it is, no *prima facie* case is made out against the present appellant as mere reference of the caste is not sufficient. Recently, in the case of ***Prathvi Raj Chauhan Vs. Union of India and ors. [(2020) 4 SCC 727]*** wherein the Hon'ble Apex Court held that grant of anticipatory bail under Section 438 Cr.P.C. is barred in respect of the offences under the 1989 Act, however *prima facie* case is not made out, anticipatory bail can be granted in appropriate circumstances with a cautious exercise of powers. Section 18 and 18A of the 1989 Act have no application where *prima facie* case is not made out. However, for evaluating the *prima facie* case re-appreciation of evidence is not required.

13. In the light of the above well settled law and after considering the facts on record, the observation of the Special Court that bar under Section 18A is erroneous, and therefore, the order passed by the Special Court deserves to be set aside. In view of that, I proceed to pass following order :

- (i) The appeal is allowed.
- (ii) The order passed by the Special Judge and Additional Sessions Judge-2, Amravati in Criminal Bail Application No.1214 of 2023 is hereby quashed and set aside.

(iii) In the event of arrest, the appellant - Sachin s/o Tryambakrao Hade in connection with Crime No.294 of 2023 registered at police station Walgaon, Tq. Bhatkuli, District Amravati for the offence punishable under Section 294 and 295 of the Indian Penal Code read with Section 3(1)(r), 3(1)(s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, be released on anticipatory bail on executing P.R. Bond in the sum of Rs.25,000/- (Rs. Twenty five thousand) with one surety in the like amount.

(iv) The appellant shall attend concerned Police Station once in a week i.e. on every Sunday between 10.00 a.m. and 1.00 p.m. and shall cooperate with the investigating agency.

(v) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper the prosecution evidence.

14. The appeal is disposed of accordingly.

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

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