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

CRIMINAL APPEAL NO.744 OF 2023

Akash S/o Pralhad Pulate,
Age about : 29 Years,
Occ : Agriculturist, R/o Kakadati,
Tah. Pusad, Dist. Yavatmal.

..... APPELLANT

// VERSUS //

1. State of Maharashtra,
Through its Police Station Officer,
Police Station, Pusad City,
District Yavatmal.
2. Bharat Bhaurao Wankhede,
Age about : 41 Years,
Occu : Business, R/o Kakadati Pusad,
District Yavatmal.

.... RESPONDENTS

Mr. V. M. Vishwarupe, Advocate for appellant.
Mrs. M. H. Deshmukh, APP for respondent No.1/State.
Ms. F. N. Haidari, appointed Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 17.01.2024

ORAL JUDGMENT :

1. Heard.
2. **Admit.**
3. The appellant has preferred this appeal challenging the order dated 25/10/2023 passed by the Special Court under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act,

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Pusad in Criminal Bail Application No.373/2023 rejecting the anticipatory bail application of the appellant.

4. The appellant has preferred this appeal on the ground that one Bharat Bhaurao Wankhede has filed FIR against him on an allegation that he is resident of Pusad and doing the private job. There was a quarrel on account of installation of the statue of Ganpati on the Ganpati festival and present appellant and other co-accused abused him on his caste and also assaulted him by means of one utensil. On the basis of said report, police have registered the crime against the present appellant and other co-accused.

5. The present appellant approached to the Sessions Court by referring an application for anticipatory bail on the ground that the provisions of Atrocities Act are not applicable against him therefore, there is no bar under Section 18 or 18A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act of 1989' for short). The custodial interrogation of the present appellant is not required and hence, he be protected by granting anticipatory bail. The Special Court considered the recitals of the FIR and observed that an act which is committed by the accused persons in presence of public at large and there are abuses on the caste, therefore, *prima facie* case is made out

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from the recitals of the FIR bar under Section 18 is attracted and rejected the application.

6. Being aggrieved and dissatisfied with the same, present appeal is preferred by the appellant on the ground that learned trial Court had not considered that for attracting the provisions under the Act of 1989. There should be specific allegation against the appellant. The abuses are not narrated by the informant in the FIR. So from the recitals of the FIR, *prima facie* the offence under the provision of Atrocities Act is not made out and, therefore, bar under Section 18 of the Act of 1989, is not attracted. In view of that, the appellant be released on anticipatory bail, in the event of his arrest.

7. Heard learned Counsel for the appellant. He submitted that the observation of the trial Court that bar under Section 18 is attracted itself is illegal and arbitrary and liable to be quashed and set aside. He further submitted that mere reference of the informant by his caste is not sufficient to attract the provisions but there should be specific allegation and the abuses should be with intent to humiliate or insult the informant. The said ingredient is absent in the FIR. Thus, *prima facie* case is not made out. It is an omnibus allegation against the appellant, which is not sufficient to reject the application of the appellant for anticipatory bail. In view of that,

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appeal be allowed and appellant be released on bail in the event of his arrest.

8. In support of his contention he placed reliance on **Papu Ashok Supekar and others Vs. State of Maharashtra** reported in 2020 SCC OnLine Bom 831 and **Vijaymala and others Vs. State of Maharashtra** reported in 2020 SCC OnLine Bom 278 and **Prathvi Raj Chauhan Vs. Union of India and others** reported in (2020) 4 SCC 727.

9. Per contra, learned APP strongly opposed the appeal on the ground that the provisions of Atrocities Act are applicable, as there is a specific allegation against the present appellant, which shows that the appellant has abused the informant with intention to humiliate and insult and the alleged incident has occurred within the public view. Therefore, bar under Section 18 of the Act of 1989, is attracted and the application for anticipatory bail is not maintainable and, therefore, appeal deserves to be dismissed.

10. Learned Counsel for the respondent No.2 also reiterated the same contention and submitted that there is specific allegation against the present appellant, who has not only referred the caste of the informant but also abused him on his caste, which is sufficient to attract the provisions of Atrocities Act and, therefore, the application

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for anticipatory bail is not maintainable. The learned trial Court has rightly rejected the application and no interference is called for.

11. After hearing the learned Counsel for the appellant, learned APP for the State and learned appointed Counsel for the respondent No.2 and perused the recitals of the FIR. As per the allegation, there was dispute between the informant and the present appellant and other co-accused on account of donation for the Ganesh festival. It is alleged in the FIR that there was hot exchange of words between the informant and the appellant on that count and the appellant and other co-accused Rohan Korde referred the caste of the informant and abused him by saying 'चांभान्या तु लई माजला तु उडया मारायला'. Thus, there is a specific allegation against the present appellant that they have not only referred the caste of the informant but also abused him by referring the said caste. Admittedly, the alleged incident has taken place within the public view i.e. in front of Jai Bajrang Ganpati Mandal, wherein the celebration of Ganesh festival was going on. Thus, there is no dispute as to the fact that the alleged incident has occurred in presence of the public, who was present at the spot. For attracting the provisions under the Atrocities Act, there should be abuses on the caste and the alleged incident should be within the public view.

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12. Learned Counsel for the appellant placed reliance on **Vijaymala and others Vs. State of Maharashtra** (supra), after considering the para No.10, it reveals that in the said decision the caste of the person was referred and there was no further abuses. Whereas, in the case of **Papu Ashok Supekar and others** (supra) only caste of the person was referred and there were no abuses and, therefore, the appellants therein were protected by the Court.

13. Learned Counsel further placed reliance on the decision of the Apex Court in **Prathvi Raj Chauhan Vs. Union of India** (supra) wherein the Hon'ble Apex Court held that grant of anticipatory bail under Section 438 of Cr. P.C. is barred in respect of offences under the 1989 Act. However, where *prima facie* case is not made out, anticipatory bail can be granted in appropriate circumstances, with a cautious exercise of power. Sections 18 and 18-A of the 1989 Act have no application where *prima facie* case is not made out. However, for evaluating *prima facie* case, reappraisal of evidence is not required. The observation of the Hon'ble Apex Court further shows that the clear intention of Parliament in inserting Section 18-A into the 1989 Act was to undo the effect of the Supreme Court's declaration in *Subhash Kashinath Mahajan* case. The provisions of the amendment expressly override the directions in *Subhash Kashinath Mahajans* case, that a preliminary inquiry within seven

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days by the Deputy Superintendent of Police concerned, to find out whether the allegations make out a case under the Act, and that arrest in appropriate cases may be made only after approval by the Senior Superintendent of Police. The Parliamentary intent was to allay the concern that this would delay registration of First Information Report (FIR) and would impede strict enforcement of the provision of the Act.

14. It is further held by the Hon'ble Apex Court these facts ought to be kept in mind by courts which have to try and deal with offences under the Act. It is important to keep oneself reminded that while sometimes false accusations are made, those are not necessarily reflective of the prevailing and widespread social prejudices against members of these oppressed classes. Significantly, the amendment of 2016, in the expanded definition of "atrocities", also lists pernicious practices including forcing the eating of inedible matter, dumping of excreta near the homes or in the neighbourhood of members of such communities and several other forms of humiliation, which members of such Scheduled Caste communities are subjected to. All these considerations far outweigh the petitioners' concern that innocent individuals would be subjected to what are described as arbitrary processes of investigation and legal proceedings, without adequate safeguards.

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15. It is further held that there is right to live with dignity and also right to die with dignity. For violation of human rights under Article 21 grant of compensation is one of the concomitants which has found statutory expression in the provisions of compensation, to be paid in case an offence is committed under the provisions of the 1989 Act. A good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty, and property. Therefore, it has been held to be an essential element of the right to life of a citizen under Article 21 as observed by this Court in *Umesh Kumar v. State of A.P.*, reported in (2013) 10 SCC 591.

16. After discussing the various earlier judgments Hon'ble Apex Court held that where *prima facie* case is not made out, the anticipatory bail can be granted in appropriate circumstances, but said discretion is to be exercised by cautiously and at the time of exercising the jurisdiction reappreciation of the evidence is not required. So what is required to be seen is whether there is a *prima facie* case or not. After considering the allegations in the FIR, admittedly, there is a specific allegation against the present appellant alleging that he has not only referred the caste of the informant but also abused him by referring the said caste, which is at this stage sufficient to show that, the sentence was uttered by the appellant in

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order to insult and humiliate the informant. Thus, *prima facie* case is made out in the present case and, therefore, bar under Section 18 of the 1989 Act, is attracted and application for anticipatory bail is not maintainable. In view of that, the appeal deserves to be dismissed being devoid of merits. Accordingly appeal is dismissed.

17. The fees of the appointed Counsel for respondent No.2 be quantified as per rules.

(URMIL A JOSHI-PHALKE, J.)