



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

CRIMINAL APPEAL NO. 747 OF 2023

APPELLANTS:

- 1] Sadhana w/o Subhash Mehsare,
Aged about 55 years,
Occupation - Service.
- 2] Shubham s/o Subhash Mehsare,
Aged about 22 years,
Occupation – Computer Repairing.

Both R/o. Gayatri Nagar, Mothi Umari,
Akola, Tah. and District Akola

...V E R S U S...

RESPONDENTS

- 1] State of Maharashtra,
through Police Station Officer,
Police Station Civil Liners, Akola,
Tah. and District Akola.
- 2] Dipika w/o Sheshrao Tajne,
Aged about 47 years,
Occupation – Housewife,
R/o Gayatri Nagar, Mothi Umari, Akola,
Tah. and District - Akola.

Mr. A.M. Tirukh, counsel for appellants.

Ms. T.H. Udeshi, APP for the respondent/State.

Mr. Sumit G. Joshi, counsel (appointed) for respondent No.2.

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

DATE : **29/01/2024**

ORAL JUDGMENT :

1. Heard. **Admit.**
2. Heard finally with the consent of the learned counsel appearing for the parties.
3. By preferring this appeal, the appellants have challenged the order passed by the Special Judge, Akola under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989(for short 'the Act of 1989'), in Criminal Bail Application No. 755/2023, dated 03/11/2023, by which the application of the appellants were rejected.
4. The appellants are apprehending arrest, in connection with Crime No. 389/2023 registered with Civil Lines Police Station, Akola for the offences punishable under Sections 354-A, 324, 504, 506 read with Section 34 of the Indian Penal Code and under Sections 3(1)(w)(i), 3(1)(w)(ii), 3(2)(va) of the Act of 1989. The crime is registered on the basis of report lodged by the victim, on an allegation that the present appellants and other co-accused are her neighbors. On 24/10/2023 at about 9 to 10 a.m. there was a quarrel between them on trifle reason when the informant was cleaning the land of the present appellants. She was assaulted and abused by the present appellants and another co-accused. As per her allegations, all the co-accused abused her and one of the accused has outraged her modesty. On the basis of said report, the police have registered the crime against the present appellants.

5. Learned counsel for the appellants vehemently submitted that as far as the provisions of the Act of 1989 are concerned which is not applicable, as vague allegations are made against the present appellants. There is no single sentence showing that the informant was abused on her caste by the appellants. Therefore, the bar under Section 18 or 18A of the Act of 1989 is not applicable.

6. Moreover, as the bar under Section 18 or 18A of the Act of 1989 is not attracted and the prima-facie case is not made out, the learned trial Court without application of mind, erroneously rejected the application. The learned trial Court ought to have considered the settled law that if prima-facie case is not made out, the application for anticipatory bail is maintainable. Therefore, the order passed by the learned trial Court deserves to be quashed and set aside.

7. Learned APP for the State strongly opposed the present application on the ground that there is a bar under Section 18A of the Act of 1989 is attracted. He further submitted that during the investigation, the statement of the witnesses were recorded which shows that the present appellants were involved in the crime and abused/assaulted the informant. Therefore, the order passed by the learned trial Court is legal and proper one and liable to be maintained.

8. Learned counsel Mr. S.G. Joshi, for the informant

also endorsed the same contention and submitted that the bar under Section 18-A of the Act of 1989 is attracted and the application is not maintainable. He further submitted that the offence under Section 3(2)(va) is also attracted, as there is allegations of outrage of modesty.

9. As far as the bar under Section 18 is concerned, it is now well settled that while considering the anticipatory bail application and bar under Section 18, it has to be borne-in-mind that if a person is even alleged of accusation of committing an offence under the Act of 1989, the language of Section 18 is clear to debar the applicant from seeking 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 Court would be justified in a very limited sphere to examine whether the application can be rejected on the ground of its maintainability.

10. The Hon'ble Full Bench of the Rajasthan High Court in the case of *Virendra Singh Vs State of Rajasthan*¹ has considered this issue and held that from the FIR itself the ingredients of the offences as laid down under Section 3 of the Act of 1989 are found to be missing. The bar created by Section 18 would not be allowed to operate against an accused and only in that event the application of the applicant for anticipatory bail would be dealt with concerned

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Court to determine whether the Act of 1989 can be said to be rightly applicable against the accused.

11. The same is followed by this Court in the case of ***Ratnakala Martandrao Mohite Vs The State of Maharashtra and another²***, wherein this Court has referred the various statements to the Hon'ble Apex Court as well as this Court and held that in the light of the aforesaid judicial authority, it is evident that application under Section 438 of the Cr.P.C. for the relief of pre-arrest bail can be entertained only on the ground of in-applicability of provisions of Act of 1989 and it would be verifiable only after perusal of recitals of the FIR or complaint itself and not beyond that. Thus, it is a rule of law that once it is gathered from the FIR that the appellants are the accused of committing an offence as prescribed under Section 3(1)(r),(s) or (w)(ii) of the Act of 1989, the bar under Section 18A of the Act of 1989 would instantly come into operation against them. In contrast, if the contents of FIR do not constitute ingredients of offence under the Act of 1989, there would not be any embargo or statutory bar engrafted under Section 18 or 18A of the Act of 1989. It is not permissible for the Court to enter into roving enquiry in regard to sustainability of accusation nurtured on behalf of complainant.

12. In the case of ***Prathvi Raj Chauhan vs Union of***

*India and others*³ wherein also the Hon'ble Apex Court held that grant of anticipatory bail under Section 438 of the Cr.P.C. is barred in respect of the offences under the Act of 1989. However, where prima-facie case is not made out, anticipatory bail can be granted in appropriate circumstances, with a cautious exercise of power. Section 18 and 18A of the Act of 1989 has no application where the prima-facie case is not made out. However, for evaluating prima-facie case, re-appreciation of evidence is not required.

13. Thus, in view of the settled position of law, if the facts of the present case are reconsidered there is general allegations even there is no reference of caste in the FIR. It is also not mentioned in the FIR that the appellants were knowing that the victim belongs to the Scheduled Caste or the Scheduled Tribe.

14. The recitals of the FIR show that co-accused Subhash Tukarm Mehsare has outraged the modesty of victim and the allegation against the Bhushan and Shubham regarding the assault, as far as the present appellants are concerned, there is no specific allegations against them. Thus, to attract the provisions of the Act of 1989, against the appellants, a prima-facie case is required to be made out.

Considering the allegations made against the present appellants, it is apparent that learned trial Court has not considered the role of the present appellants and has also

not considered whether the provisions of Act of 1989 are attracted or not. The learned trial Court has also ignored the well settled law that if prima-facie case is not made out, on the basis of FIR, the bar under section 18 or 18A is not attracted. Thus, the order passed by the learned trial Court needs to be quashed and set aside and the same is quashed and set aside. In view of above, the appeal deserves to be allowed. Accordingly, I proceed to pass the following order:

- a) The criminal appeal is allowed.
- b) The order passed by the learned Special Judge, Akola in Criminal Bail Application No. 755/2023 rejecting the anticipatory bail application is quashed and set aside.
- c) The appellants- **Sadhana w/o Subhash Mehsare** and **Shubham s/o Subhash Mehsare**, in the event of their arrest, in connection with Crime No. 389/2023 registered with Civil Lines Police Station, Akola for the offence punishable under Sections 354-A, 324, 504, 506 read with Section 34 of the Indian Penal Code, 1860 and under Sections 3(1)(w)(i), 3(1)(w)(ii), 3(2) (va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities)Act, 1989, shall be released on

bail on executing PR. Bond of Rs. 25,000/- each with one solvent surety in the like amount.

- d) The appellants shall attend the concerned Police Station as and when required for the purpose of investigation.
- e) The appellants shall not tamper with the prosecution evidence or shall not induce, threat or pressurize any witnesses who are connected with the crime.
- f) The fees of the appointed counsel be quantified as per the Rule.

Criminal appeal is **disposed of** accordingly.

[URMILA JOSHI-PHALKE, J.]