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

CRIMINAL APPEAL NO.755 OF 2023

1) Ramesh Ramkrushna Patil,
Aged about 64 years,
Occupation – Retired.

2) Rahul Ramesh Patil,
Aged about 38 Years,
Occupation – Business,
Both are R/o. Geeta Nagar,
Akola, Tq. Dist. Akola.

..... APPELLANTS

// VERSUS //

1) State of Maharashtra,
Through Police Station Officer,
Police Station, City Kotwali, Akola,
Tq. and Dist. Akola.

2) Deepmala Bhagwan Pakhre,
Aged about 33 Years,
Occupation – Service,
R/o. New Ashok Vatika Shivni,
Akola, Tq. Dist. Akola.

.... RESPONDENTS

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

Mr. A. R. Chutke, APP for respondent No.1/State.

Ms. Kirti Deshpande, appointed Advocate h/f Mr. Tejas Deshpande,
appointed Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 05.01.2024

ORAL JUDGMENT :

1. Heard.

2. Admit.

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3. Present appeal is preferred by the appellants under Sections 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act), 1989 (hereinafter referred to as “the Act of 1989” for short) against the order by which the anticipatory bail application of the appellants is rejected by the Special Court.

4. Present appellants have filed an application for grant of anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with Crime No.278/2023 registered with Kotwali Police Station, Akola for the offences punishable under Sections 354-A, 294, 323, 504 and 506 read with Section 34 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(w)(i), 3(1)(w)(ii) and 3(2)(va) of the Act of 1989. The appellants are apprehending their arrest at the hands of police, as crime is registered on the basis of report lodged by victim who belongs to the Scheduled Caste, on an allegation that she is serving as a Police Constable and the appellants are running the shop and supplying the various materials to the Police Training Center. On 14.08.2023 at about 4.45 p.m. when she had been to obtain the photo copy in one shop at that time present appellants were present there and there was altercations of the words between them and they abused her in a filthy language and also on her caste. She was also threatened by the

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present appellants. On the basis of said report, police have registered the crime against the present appellants.

5. Learned Counsel for the appellants submitted that the alleged FIR came to be lodged after 80 days only to give the counterblast to the report filed by the present appellants against her. There is no explanation as far as the delay is concerned. He further submitted that during investigation various statements of the witnesses are recorded which falsifies the story of the victim which she has narrated before the Investigating Officer. He further submitted that as far as the provisions of Atrocities Act are concerned, which are not attracted as there is no reference as to the caste in the FIR by the informant. She is not abused on her caste and therefore, bar under Section 18 or 18-A is not attracted against the present appellants and anticipatory bail application is maintainable. He further submitted that considering the fact that after 80 days the FIR is lodged only to give counterblast to the complaint lodged by the present appellants and the allegations made by the informant are falsified by the statements of the witnesses, the appellants be protected by granting anticipatory bail.

6. Learned APP strongly opposed the application on the ground that, in the FIR victim has specifically stated the words used by the present appellants who insulted and humiliated her. The

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words used are with intention to humiliate her therefore, the provisions of Atrocities Act are applicable in the present case and, therefore, application for anticipatory bail is not maintainable.

7. Learned Counsel for the informant has also endorsed the same contention and submitted that considering the bar is attracted, the application deserves to be rejected.

8. After hearing both the sides and on perusal of the investigation papers as well as the submissions made by both the sides, it is necessary to see whether the bar under Section 18 or 18A is attracted and whether the application for anticipatory is maintainable. In **Virendra Singh Vs. State of Rajasthan** reported in **2000 Cri. L. J. 2899** wherein the Full Bench of the Rajasthan High Court 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 application for anticipatory bail, the Courts would be justified in merely examining

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as to whether there is at all an accusation against the 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 therefrom taken at their face value disclose the existence of the ingredients constituting the alleged offence.

9. On the basis of said judgment the similar view is taken by this Court in **Ratnakala Martandrao Mohite Vs. The State of Maharashtra and another** reported in 2020 ALL MR (Cri.) 334, **Navnath s/o Dalsing Rathod @ Aade and others Vs. The State of Maharashtra through Police Inspector, Karmad Police Station, Aurangabad and another in Criminal Appeal No.968/2018** decided on 25.04.2019 and **Jagdish Sajjankumar Banka Vs. State of Maharashtra and others** reported in 2023 ALL MR (Cri.) 2911

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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 18A of the Act create bar for exercising jurisdiction under Section 438 of the Cr.P.C. However, it would not preclude the concerned Court from examination of the allegations made in the FIR and its face value to determine whether *prima facie* case is made out or not?

10. In **Vilas Pandurang Pawar and another Vs. State of Maharashtra and others** reported in **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 Act 1989, unless it *prima facie* finds that such an offence is not made out. Similar principles also laid down by this Court in such circumstances, it is evident that, in spite of bar under Section 18 of the Act of 1989 for invocation of 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 appellants. Thus the application under Section 438 of 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, 1989.

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11. Learned Counsel Mr. Tirukh for the appellants submitted that in the case in hand, it reveals from the record that the present appellants have initially filed the complaint against the informant and thereafter after 80 days this complaint is lodged by the informant which shows that the complaint is lodged only to give counterblast to the said complaint lodged by the present appellants. He further submitted that as far as the recitals of the FIR are concerned, there is no allegation that present appellants have abused the informant on her caste. Even there is no reference in the FIR that any words are uttered by the present appellants referring her caste. It is now well settled that, merely referring of the caste of a person is not sufficient to attract the provisions of the Atrocities Act. Learned trial Court ought to have considered the settled law while entertaining the application for anticipatory bail. 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 allegation against the present appellants is that, they have abused her in a filthy language. Admittedly, there is no explanation as far as delay is concerned. From the recitals of the FIR, even there is no reference of the caste of the informant and the abuses are not on her caste. To attract the provisions of the Atrocities Act, there has to be intentional insult or intimidation of the complainant to humiliate or insult her, which is

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absent in the present case. From the statements of the various witnesses also it reveals that this report is lodged by the informant after thought only to give counterblast to the complaint lodged by the present appellants. The statement of the various witnesses falsifies the story narrated by the informant. The Investigating Officer has recorded the various statements as the alleged incident has taken place within the public view. Considering the various statements recorded by the Investigating Officer, which falsifies the story narrated by the informant as well as the recitals of the FIR are not sufficient to attract the provisions of Atrocities Act, the appeal deserves to be allowed. In view of that, I proceed to pass following order.

ORDER

- (i) Appeal is hereby allowed.
- (ii) The order dated 22.11.2023 passed by the Special Court rejecting the anticipatory bail application is hereby quashed and set aside.
- (iii) The appellant No.(1) **Ramesh Ramkrushna Patil** and No.(2) **Rahul Ramesh Patil** be released on anticipatory bail in the event of their arrest on executing PR bond in the sum of Rs.15000/- each with one solvent surety in the like amount, in connection with Crime No.278/2023 registered with City Kotwali Police Station, Akola, District Akola for the offences punishable under Sections 354-A, 294, 323, 504 and 506 read with Section 34 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(w)(i), 3(1)(w)(ii) and 3(2)(va) of the

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Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act), 1989.

(iv) The appellants shall attend the concerned Police Station as and when required for the investigation purpose.

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

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

(URMIL A JOSHI-PHALKE, J.)