



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

CRIMINAL APPEAL NO. 770 OF 2023

- APPELLANTS:**
- 1] Pandurang Jagan Wabale,
Aged about 31 years, Occu: Agriculturist.
 - 2] Vitthal Maruti Khandare,
Aged about 39 years, Occu: Agriculturist,
R/o Ekamba Tah. and District Washim.

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

- RESPONDENTS**
- 1] State of Maharashtra,
through Police Station Officer,
Police Station Ansing, Washim.
 - 2] Bhavana Vijayrao Sabale,
Aged 48 Occu- Household,
R/o Ekamba Tah. and Dist. Washim.

Mr. Mir Nagman Ali, counsel for appellants.

Mrs. M.A.Barbde, APP for the respondent No.1.

Ms. Varsha Warade, counsel h/f Mr. S.D. Chande, counsel
respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 01/02/2024

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 Sessions Judge, Washim under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for short 'the Act of 1989') by which the Sessions Judge has rejected the application filed by the appellants.

4. The present appellants have preferred the application under Section 438 of the Code of Criminal Procedure, 1973 for pre-arrest bail before the learned trial Court, as the accusation is made against the appellants on the basis of report lodged by the informant- Bhavna Vijayrao Sable. On 08/11/2023 alleging that on 14/10/2023, she had been to the village Ekamba with her husband to attend the ceremony at the house of her relative. Thereafter, they went to the agriculture field of their relative at about 11.30 to 12.00 p.m., wherein the accused were cultivating 'Soybean' in their field. The appellants loudly laughed upon her and appellant No.1 referred to her by her caste and abused her on her caste, so also, the appellant No.2 referred her on her caste. It is further alleged that other co-accused have assaulted her and the present appellant No.1 assaulted her by fist and kick blows. On the basis of said report, the police have registered the crime against the present appellants and therefore, they approached to the

learned trial Court for grant of anticipatory bail. The learned trial Court rejected the bail application by assigning the reason that there is a specific bar under Section 18 of the Act of 1989 for grant of anticipatory bail. In view of the specific bar, the application is not maintainable and the same was rejected. Being aggrieved with the same, the present appeal is preferred by the appellants.

5. Learned counsel for the appellants submitted that mere reference of the caste is not sufficient to attract the provisions of the Act of 1989, as far as the present appellants are concerned, and the allegation made against them, they have abused the informant and her husband by the caste. The abuses are not on the caste of the present informant, thus the prima-facie case is not made out against the present appellants. In support of his contention, he placed reliance in the cases of *Pradnya Pradeep Kenkare and another V/s State of Maharashtra*¹, *Pravin Shrimant Bhutekar V/s State of Maharashtra and another*² and *Rashidkha Anwarkha Pathan and another Vs State of Maharashtra and another*³ and submitted that in view of the above cited decisions and in the present case also, it is crystal clear that mere reference of the caste is not sufficient to attract the provisions of the Act of

1 2005 (2) Bom. C.R. (Cri.) 431

2 2010 (3) Bom. C.R. (Cri.) 678

3 2019 All. M.R. (Cri) 3200

1989. Moreover, the alleged incident has not taken place within the public view and therefore, the provisions are not applicable. In view of that, the bar under Section 18 of the Act of 1989 is not attracted and the application for grant of anticipatory bail is maintainable.

6. Per contra, learned APP for the State strongly opposed the application and submitted that considering the allegations in the First Information Report, a specific case is made out against the present appellants who not only referred the informant by her caste but also abused her on her caste and therefore, the bar under Section 18 or 18-A of the Act of 1989 is attracted. In view of that, the appeal is devoid of merits and liable to be dismissed.

7. Learned counsel appearing for respondent No.2 also endorsed the same contention and submitted that the delay in lodging First Information Report is properly explained by the informant. The specific case is made out against the present appellants who have not only referred the caste but abused the informant on her caste, therefore, the bar is attracted under Section 18 and the appeal deserves to be dismissed.

8. After hearing both the sides and on perusal of the investigation papers and in view of the settled law, the recitals of

the First Information Report are to be looked into. Learned counsel for the appellants submitted that the alleged incident has taken place on 14/10/2023 whereas the First Information Report is lodged on 08/11/2023 i.e. after an inordinate delay and the delay is not explained by the informant. He further submitted that mere reference of the caste is not sufficient to attract the provisions.

9. The bar under Section 18 of the Act of 1989 is applicable when there is prima-facie material to show that the appellants have committed the offence under the provisions of the Act of 1989. This fact is considered by the Full Bench of the Rajasthan High Court in the case of *Virendra Singh Vs State of Rajasthan*⁴, wherein the full bench of the Rajasthan High Court held that, if a person is even alleged of accusations 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 inter 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.

4 2000 Cr.L.J.2899

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 First Information Report 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 to a complete bar against the entertainment of application of anticipatory bail which is unambiguously laid down under Section 18 of the Act of 1989, which is apparent from the perusal of the section itself and thus the court at the most would be required to evaluate the First Information Report 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.

10. Moreover, this aspect is also considered by this Court in the cases of *Ratnakala Martandrao Mohite Vs. The State of Maharashtra and another*⁵, *Navnath s/o Dalsing Rathod @ Aade*

and ors. Vs. State of Maharashtra thr. Police Inspector Karmad Police Station, Aurangabad and another⁶, and Jagdish Sajjankumar Banka Vs. State of Maharashtra and another⁷ wherein by referring the judgment of 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 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 First Information Report on its face value to determine whether prima-facie case is made out or not. In the case of *Vilas Pandurang Pawar and anr. Vs. State of Maharashtra and others⁸*, wherein the Hon'ble Apex Court held that no Court shall entertain an 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 are also laid down by this Court in the above-said decisions.

11. Recently, the Hon'ble Apex Court in the case of *Prathvi Raj Chauhan vs Union of India and others⁹*, it is held that

6 Criminal Appeal No. 968/18 dt. 25/04/2019.

7 2023 SCC OnLine Bom 581

8 2012 ALL MR (CRI) 3743 (S.C.)

9 (2020) 4 SCC 727

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.

12. In the light of the above well settled legal position, if the facts of the present case are considered, the role attributed to the appellant No.1 shows that he has assaulted the informant by means of fist and kick blows and as far as the applicability of the provisions of the Act of 1989 is concerned, it refers that both the appellants have referred the informant by her caste. It is well settled that mere reference of the caste is not sufficient to attract the provisions of the Act of 1989. Thus, in view of the well settled law and on consideration of the recitals of the First Information Report, prima-facie case is not made out against the present appellants to attract the provisions of the Act of 1989 and in view of that, anticipatory bail application is maintainable. On taking into consideration, the facts of the case, admittedly the recitals of

the First Information Report nowhere shows that the present appellants have abused the informant on her caste. There is the only reference of the caste which is not sufficient as merely calling a person by his caste though may amount to insult or abuse to him, it can be said to be with intent to humiliate such person to show that the intentional insults or intimidates, intimidation was with intent to humiliate a person, some more material is required which is absent and not revealed from the recitals of the First Information Report. The allegations only referred that the present appellants have referred the informant by her caste. Thus, the basic ingredients of the offence appears to be absent as the alleged incident only discloses about the reference of the caste by the present appellants. In view of that bar under Section 18 of the Act of 1989 is not attracted. The learned trial Court has ignored the said facts while rejecting the bail application.

13. In view of the contents of the First Information Report which do not constitute the ingredients of the offence and therefore, the appeal deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order:

- a) The criminal appeal is **allowed**.
- b) The order passed by the learned the Sessions Judge,

Washim under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, in Criminal Bail Application No. 386/2023 dated 01/12/2023 is quashed and set aside.

- c) In the event of his arrest, the appellants – **Pandurang Jagan Wabale and Vitthal Maruti Khandare** are released on ad-anticipatory bail, in connection with crime No.305/2023 for the offences punishable under Sections 506 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 registered with Ansing Police Station, District Washim, on executing PR Bond in the sum 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 investigation purpose.
- e) The appellants shall not directly or indirectly induce, threat or pressurize any witnesses who are acquainted with the facts of the present case.

The Criminal Appeal is disposed of accordingly.

[URMILA JOSHI-PHALKE, J.]