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

CRIMINAL APPEAL NO.811 OF 2023

Mohammad Kashif Mohammad Arif,
Aged about 30 years, Occupation : Pendol
Decorator, R/o. Gaigaon, Ural,
Taluka and District Akola.

..... APPELLANT

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Ural Police Station, District Akola.
2. Rajkanya w/o Himmat Wankhade,
Aged about 40 Years, Occupation : Household,
R/o. Gaigaon, Ural, Taluka and District
Akola.

.... RESPONDENTS

Mr. S. G. Joshi, Advocate for appellant.
Mr. A. R. Chutke, APP for respondent No.1/State.
Ms. Archana P. Murrey, appointed Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 02.02.2024

ORAL JUDGMENT :

1. Heard.
2. Admit.
3. By preferring this appeal, the appellant has challenged the order passed by the Special Court under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act in Bail

(2)

Application No.852/2023 by which, the application for pre-arrest bail is rejected on 18.12.2023.

4. The appellant is apprehending arrest at the hands of police, as crime is registered against him, vide Crime No.417/2023, registered with Ural Police Station, Taluka Balapur, District Akola for the offences punishable under Sections 354, 323, 504 and 506 of the Indian Penal Code and under Sections 3(1)(w)(i), 3(2)(va), 3(1)(r) (s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act of 1989' for short).

5. The accusation against the appellant is on the basis of report lodged by informant Rajkanya Himmat Wankhade alleging that her sons were working with Manoj Dhok, who works for the pendal decoration. On 06.12.2023 both were working for one marriage ceremony in the village. Her son Umesh asked the co-worker to obtain the light, bulb or the lamps from the adjacent city i.e. Akola. The appellant who runs business of supplying pendal decoration items and focus lights at Gaigaon. He got annoyed when he came to know that, son of the informant asked his co-worker to bring the articles from Akola. On 06.12.2023, at about 3.30 p.m., the accused assaulted the son of the informant near her home and when she was rescuing her son, the accused pulled her arm and dupatta

(3)

and abused her and she sustained blunt trauma in the said incident. On the basis of said report, police have registered the crime against the present appellant.

6. Apprehending the arrest at the hands of police, the appellant approached to the Special Court for grant of anticipatory bail. Learned trial Court had considered the recitals of the FIR as well as the role of the present appellant and held that as there is a bar under Section 18 of the Act of 1989, the application for anticipatory bail is not maintainable and rejected the application. Being aggrieved and dissatisfied with the same, present appeal is preferred by the appellant on the ground that as no *prima facie* case is made out from the recitals of the FIR, and therefore, the application for anticipatory bail is maintainable.

7. Learned Counsel for the appellant Mr. Joshi submitted that it is settled law that entirely the bar will not operate and the anticipatory bail application is maintainable when no *prima facie* material is made out against the accused, to attract the provisions of the Atrocities Act. However, the learned trial Court has not considered the same and rejected the application erroneously. He submitted that the learned trial Court ought to have consider from the recitals of the FIR that there is no material to show that the appellant was knowing that the informant is belonging to the

(4)

Schedule Castes or Scheduled Tribes. The recitals of the FIR further nowhere shows that present appellant has used any abuses on caste, even there is no reference as to the caste. Whatever material collected by the Investigating Officer is during further investigation, as the informant has modified her story. When her statement under Section 164 of the Code of Criminal Procedure is recorded by alleging that the present appellant has outraged her modesty by using the filthy language and by abusing on her caste. As far as the recitals of FIR are concerned, no case is made out against the present appellant and hence, the application for grant of anticipatory bail is maintainable. He further submitted that learned trial Court has not taken into consideration this aspect and merely mentioning that in view of the bar under Section 18 of the Act of 1989, the application is not maintainable and rejected the application, which is erroneous.

8. Per contra, learned APP strongly opposed the application on the ground that from the statement of the informant and her sons it reveals that, the present appellant has not only used filthy language but abused her on her caste, therefore, offence is made out against the present appellant and anticipatory bail application is not maintainable, in view of the specific bar under Section 18 of the Act of 1989.

(5)

9. Learned Counsel for the respondent No.2 also reiterated the said contentions and submitted that in view of the bar under Section 18 of the Act of 1989, the application is not maintainable. The learned trial Court has rightly rejected the application.

10. Whether the bar is attracted or not attracted is to be considered before adverting to the facts of the present case. The Hon'ble Apex Court in **Prathvi Raj Chauhan Vs. Union of India and others** reported in (2020) 4 SCC 727 dealt with the aspect of the maintainability of the anticipatory bail application and held that grant of anticipatory bail under Section 438 Cr.PC. is barred in respect of offences under the 1989 Act. However, where *prima facie* case not made out anticipatory bail can be granted in appropriate circumstances, with a cautious exercises 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 the *prima facie* case, reappraisal of the evidence is not required.

11. The Full Bench of the Rajasthan High Court has dealt about the said issue in the case of **Virendra Singh Vs. State of Rajasthan** reported in 2000 ALL MR (Cri.) Journal 196, wherein it is 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

(6)

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 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 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 similar view is taken by this Court in **Ratnakala Martandrao Mohite Vs. The State of Maharashtra and**

(7)

another reported in 2020 ALL MR (Cri.) 334, Navnath s/o Dalsing Rathod @ Aade and others Vs. State of Maharashtra Through Police Inspector Karmad Police Station, Aurangabad and another decided on 25.04.2019 in Criminal Appeal No.968/2018 and Jagdish Sajjankumar Banka Vs. State of Maharashtra and others reported in 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 discussed and held that the provisions of Section 18 as well as newly amended Section 18-A 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 the allegations made in the FIR on its face value to determine whether prima facie case is made out or not?

12. 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 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 involving of powers under Section 438 of

(8)

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 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, 1989.

13. 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 appellant preferred present appeal by resorting the remedy under Section 14-A(2) of the Atrocities Act, 1989 and submitted that as *prima facie* case is not made out by the informant in view of the recitals of the FIR and therefore, the bar under Section 18, is not applicable in the present case.

14. Reverting back to the facts of the present case, the allegation against the present appellant is that on 06.12.2023 there was a quarrel between him and the son of the informant, wherein the son of the informant was assaulted by the present appellant and she was also manhandled by the appellant. As far as the application of the provisions of Atrocities Act is concerned, there is no whisper that either present appellant has referred the caste of the victim or abused her or her son on the caste. Even the FIR is silent regarding the knowledge of the present appellant that she belongs to the Scheduled

(9)

Caste or Scheduled Tribe. In the light of the above facts, it is apparent that the *prima facie* case is not made out from the recitals of the FIR, as there is no reference either of the caste or any abuses on the caste. The learned trial Court has not considered the same. The basic ingredients of Section 3(1)(r)(s) that there must be intentional insult with intent to humiliate a member of Scheduled Caste or Scheduled Tribe in any place within a public view. The allegation against the present appellant is that he assaulted the son of the informant and also manhandled her. So, if the allegation is the FIR are taken into consideration to attract the provisions, the basic ingredient of the offences are absent, therefore the bar under Section 18 of the Act of 1989 is not attracted in the present case.

15. Taking into consideration the over all factual matter, there is no reference as to the caste or the abuses on the caste and therefore, no *prima facie* case is made out to attract the bar, in view of that, appeal deserves to be allowed. In the above facts and circumstances, the appeal is allowed and I proceed to pass following order.

ORDER

- (i) Criminal Appeal No.811/2023 is allowed.

(10)

(ii) The order dated 18.12.2023 passed by the Special Court, Akola in Criminal Bail Application No.852/2023 is quashed and set aside.

(iii) The appellant **Mohammad Kashif Mohammad Arif** be released on anticipatory bail in the event of his arrest in connection with Crime No.417/2023, registered with Ural Police Station, Taluka Balapur, District Akola for the offences punishable under Sections 354, 323, 504, 506 of the Indian Penal Code and under Sections 3(1)(w)(i), 3(2)(va), 3(1)(r)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

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

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

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

(URMIL A JOSHI-PHALKE, J.)