



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

CRIMINAL APPEAL No.533 OF 2024

1. Subhash s/o. Tukaram Mehsare,
Aged 61 years,
Occupation : Retired.
2. Sadhana w/o. Subhash Mehsare,
Aged 56 years,
Occupation : Service.
3. Shubham s/o. Subhash Mehsare,
Aged 28 years,
Occupation : Computer Repairer.
4. Sunita w/o. Shubham Mehsare,
Aged 24 years,
Occupation : Household.
5. Bhushan s/o. Subhash Mehsare,
Aged 26 years,
Occupation : Service.

All R/o. Gayatri Nagar, Mothi Umari,
Akola, Taluka and District Akola.

: APPELLANTS

...VERSUS...

1. State of Maharashtra,
Through Police Station Officer,
Police Station Civil Lines, Akola.
Taluka and District Akola.
2. Deepika w/o. Sheshrao Tajne,
Aged about 47 years,
Occupation : Household,
R/o. Gayatri Nagar, Mothi Umari, Akola,
Taluka and District Akola.

: RESPONDENTS

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Mr. A.M. Tirukh, Advocate for Appellants.
Ms. Ritu Sharma, Addl. Public Prosecutor for Respondent No.1.
Ms. Poonam Pisurde, Advocate for Respondent No.2 (Appointed).
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CORAM : **URMILA JOSHI-PHALKE, J.**
DATE : **20th MARCH, 2025.**

ORAL JUDGMENT :

1. Heard. **Admit.**
2. By preferring this appeal under Section 14-A(2) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Atrocities Act') the appellants have challenged the order passed by the Special Judge, under the Atrocities Act, Akola in Criminal Bail Application No.562/2024 by which the application of the appellants for grant of anticipatory bail is rejected.
3. Apprehending the arrest at the hands of Police in connection with Crime No.455/2024, registered with Police Station Civil Lines, Akola, for the offence punishable under Sections 294, 427, 504, 506 of the Indian Penal Code and under Sections 3(1)(g), 3(1)(w)(ii), 3(1)(r) and 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 the present appellants have approached to this Court for grant of pre-arrest bail.
4. The crime is registered on the basis of report lodged by Deepika Sheshrao Tajne on an allegation that due to the previous dispute

on account of the residential premises between the appellants and the family members, on 26.9.2023 the present appellants entered into the house in order to evict them from that place and abused them on their caste and also assaulted them. On the basis of said Police have registered the crime against the present appellants.

5. Learned counsel for the appellants submitted that admittedly there was a previous dispute regarding the residential premises between the family members of the informant as well as the present appellants. The civil suit is also filed regarding the same. Initially, two F.I.Rs. are lodged and as being it was an unsuccessful attempt to put the present appellants behind the bars. The present F.I.R. is lodged by filing the complaint before the Special Court and Special Court has directed under Section 156(3) of the Criminal Procedure Code and, therefore, this report is lodged.

6. He submitted that considering the allegations against the present appellants which are general in nature and there is only reference to the caste, as far as custodial interrogation is concerned which is not required. In view of that, they be protected by granting anticipatory bail.

7. Learned A.P.P. strongly opposed the said prayer on the ground that prima facie case is made out against the present appellants and there is a bar under Section 18 of the Atrocities Act. She submitted that the report is lodged on the direction of the Special Court and the recitals of

the F.I.R. and various statements show the involvement of the present appellants in the alleged incident. Considering the bar under Section 18 the application deserves to be rejected by dismissing the appeal.

8. Learned counsel for the complainant strongly opposed for the same and submitted that various documents filed on record shows that the informant has made attempt to take action against the present appellants by approaching to the various authorities and at last she approached to the Special Court and on the direction of the Special Court the F.I.R. is lodged. Even the investigating agencies are not co-operating with the informant and not recording the statement as per his narration as there is influence of the present appellants. Considering that the present appellants are influential persons. The prayer for grant of anticipatory bail deserves to be rejected.

9. After hearing learned counsel for the appellants and learned A.P.P. for the respondent No.1/State I have perused the recitals of the F.I.R. as well as the investigation papers from which it reveals that previously also two F.I.Rs were lodged by the informant against the present appellants. The previous dispute is between the parties and on that count there used to be a frequent quarrels between them. The civil suit is also filed against each other by the parties. As initially the proceeding under the provisions of Atrocities Act was not initiated and, therefore, again the F.I.R. is lodged. Even assuming the allegations as

against it reveals that the words used by the present appellants allegedly show that they have referred the caste of the informant. As far as abuses on the caste are concerned, the recitals of the F.I.R. nowhere shows that there were abuses on the caste. Therefore, bar under Section 18 is not attracted. The Hon'ble Apex Court in the case of **Shajan Skaria Vs. The State of Kerala and another** in **Criminal Appeal No.2622/2024**, decided on 23.8.2024, wherein the Hon'ble Apex Court while considering the ingredients of the offence observed that, "the words "with intent to humiliate" as they appear in the text of Section 3(1)(r) of the Act, 1989 are inextricably linked to the caste identity of the person who is subjected to intentional insult or intimidation. Not every intentional insult or intimidation of a member of a scheduled Caste or Scheduled Tribe community will result into a feeling of caste-based humiliation. It is only in those cases where the intentional insult or intimidation takes place either due to the prevailing practice of untouchability or to reinforce the historically entrenched ideas like the superiority of the "upper castes" over the "lower castes/untouchables", the notions of 'purity' and 'pollution', etc. that it could be said to be an insult or intimidation of the type envisaged by the Act, 1989." It is further held by the Hon'ble Apex Court that, "the dictum as laid aforesaid is that the offence under Section 3(1)(r) of the Act, 1989 is not established merely on the fact that the complainant is a member of a Scheduled Caste or a Scheduled Tribe,

unless there is an intention to humiliate such a member for the reason that he belongs to such community. In other words, it is not the purport of the Act, 1989 that every act of intentional insult or intimidation meted by a person who is not a member of a Scheduled Caste or Scheduled Tribe to a person who belongs to a Scheduled Caste or Scheduled Tribe would attract Section 3(1)(r) of the Act, 1989 merely because it is committed against a person who happens to be a member of a Scheduled Caste or Scheduled Tribe. On the contrary, Section 3(1)(r) of the Act, 1989 is attracted where the reason for the intentional insult or intimidation is that the person who is subjected to it belongs to a Scheduled Caste or Scheduled Tribe. We say so because the object behind the enactment of the Act, 1989 was to provide stringent provisions for punishment of offences which are targeted towards persons belonging to the Scheduled Caste or Scheduled Tribe communities for the reason of their caste status.”

10. In view of the above observations, if the facts of the present case are considered it reveals that general allegations are levelled against the present appellants and that is only to the extent of reference to the caste. Thus, considering the nature of the allegations, at this stage, the bar under Section 18 will not attract and, therefore, the appellants have made out a case for grant of bail in the event of their arrest. In view of that, I proceed to pass following order :

ORDER

(i) The appeal is allowed.

(ii) The order passed by the Special Judge under the Atrocities Act in Criminal Bail Application No.562/2024 is hereby quashed and set aside.

(iii) The appellants, namely, (1) Subhash s/o. Tukaram Mehsare, (2) Sadhana w/o. Subhash Mehsare, (3) Shubham s/o. Subhash Mehsare, (4) Sunita w/o. Shubham Mehsare and (5) Bhushan s/o. Subhash Mehsare, shall be released on bail in the event of their arrest in connection with Crime No.455/2024, registered with Police Station Civil Lines, Akola, for the offence punishable under Sections 294, 427, 504, 506 of the Indian Penal Code and under Sections 3(1)(g), 3(1)(w)(ii), 3(1)(r) and 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 on executing P.R. Bond in the sum of Rs.25,000/- each with one solvent surety in the like amount.

(iv) The appellants shall attend the concerned Police Station once in a week on Sunday between 10.00 a.m. to 1.00 p.m. and shall co-operate with the Investigating Agency till filing of the charge-sheet.

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

(vi) The fees of the appointed counsel be quantified as per rules.

(vii) The appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)

वाडोदे