

Criminal Appeal No.324/2017

Chhaila Shukla S/o Ramnarayan
Shukla, aged 28 years R/o village
Devri, District Panna (M.P.).

Applicant

VERSUS

1. The State of Madhya Pradesh through
P.S. Shahnagar, District Panna.
2. Ranjeet Kumar Kori S/o Premlal Kori, aged
about 25 years R/o village Devri.

Respondents

01/03/2017

Shri Anil Kumar Dwivedi, learned counsel for the accused-appellant.

Ms. Shahin Fatima, learned Government Advocate for State-respondent No.1.

None for the complainant-respondent No.2.

At the outset, the learned Government Advocate has informed this court that the concerned police station has duly informed in writing the complainant-respondent No.2 regarding the hearing of this appeal filed by the accused-appellant on 01.03.2017. The complainant-respondent No.2 is found absent when the appeal is taken up for hearing.

With the consent of learned counsel for the parties present, this appeal is finally heard at the motion stage after

admitting it.

ORDER

1. The accused-appellant has filed this appeal under Section 14A(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act") against the impugned order dated 12.01.2017 passed by the Special Judge (Atrocities) Panna in Bail Application No.52/2017, whereby the learned Special Judge dismissed an application filed by the accused-appellant under Section 438 of the Cr.P.C.

2. The brief facts of the prosecution case for adjudication of this appeal are that on 13.12.2016 at about 7:48 p.m. complainant-respondent No.2 Ranjeet Kumar Kori made an oral FIR at Police Station Shahnagar of Panna district stating that on the self-same day at about 5:30 p.m., he and his wife were standing nearby the house of one Mama Panda situated in village Devri. At that time, accused-appellant Chhaila Shukla approached him, abused him by saying "*Madarchod*" and asked him as to why he had not given him a lift on his motorcycle on previous day. Thereafter, he started beating him with a stick. As a result, he sustained an injury in his left hand. He ran away from the place of occurrence towards the school of the village, wherefrom he informed his father Premlal on his mobile-set regarding the incident. Thereupon, his father Premlal, mother Kanibai and brothers namely, Rajkumar and Sunil came there to rescue him. Meanwhile, the accused-appellant came over there and he hurled filthy abuses at his father Premlal. He also

committed marpeet with the stick with his parents and brothers. As a result, they sustained injuries on various parts of their persons. Upon the oral report, the police recorded an FIR and registered a case against the accused-appellant at Crime No.264/2016 under Sections 323, 294, 506 of the IPC and 3(1)(r)(s) and 3(2)(va) of the Act.

3. The accused-appellant filed an application under Section 438 Cr.P.C. for grant of anticipatory bail before the learned Special Judge (Atrocities) Panna. Vide the impugned order, the learned Special Judge dismissed the application, stating that the police registered the case against him for the offences punishable under the Act in addition to the offences punishable under the IPC. Consequently, the bar of Section 18 of the Act comes into play, which prohibits the grant of pre-arrest bail.

4. Being aggrieved by the impugned order, the accused-appellant has filed this appeal.

5. The learned counsel for the accused-appellant submits that the bar of Section 18 of the Act comes into effect in the present case when the learned Special Judge has arrived at a factual conclusion on the basis of the materials available before him that there is prima facie evidence against the accused-appellant that he has committed the offences punishable under the Act. However, the learned Special Judge has not given a definitive finding in this regard and dismissed the bail application on a superficial level. He submits that the approach of the learned Special Judge in deciding the bail application is

highly unjust and improper. As a result, the accused-appellant has become a victim of miscarriage of justice. After referring to the contents of the FIR, he submits that the genesis of the incident is not caste-based and that the complainant-respondent No.2 has not stated overtly or covertly in the FIR that the accused-appellant has humiliated him by hurling caste based abuses and he committed marpeet with him and his aforesaid family members because they belong to the scheduled caste community. He submits that complainant-respondent No.2 has first time stated in his case diary statement that the accused-appellant had abused him by saying "*Madarchod Chamra*". He submits that this fact is also mentioned by the learned Special Judge in the impugned order. He submits that in the case diary statement of complainant-respondent No.2, the said abuse has been intentionally incorporated by the police to bring the case under the provisions of the Act, whereas as per the contents of the FIR the accused-appellant has not committed any offence punishable under the Act. He submits that the complainant-respondent No.2 and his aforesaid family members have sustained simple superficial injuries on their persons. He submits that looking to the allegations levelled against the accused-appellant, his custodial interrogations are not required. He submits that the accused-appellant is a permanent resident of village Deori, the place of occurrence, and that he has no criminal antecedents. Upon these submissions, he prays for

grant of anticipatory bail to the accused-appellant, setting aside the impugned order of rejection of bail and allowing this appeal.

6. In reply, the learned Government Advocate submits that the police have rightly registered the case against the accused-appellant for the offences punishable under the Act. She submits that the learned Special Judge could reject the bail application under Section 438 Cr.P.C. merely mentioning in the impugned order that the bar of Section 18 comes into effect in the case without giving a definitive finding that there is a prima facie evidence on the record that the accused-appellant has committed offences punishable under the Act. Thus, the impugned order passed by the learned Special Judge is justifiable and sustainable in law. Upon these submissions, she prays for rejection of this appeal.

7. I have considered the rival submissions made by the learned counsel for the parties before me and perused the impugned order and materials available before me while dealing with this appeal.

8. The following points are before me for consideration in this appeal :-

(I) When a criminal case is registered by the police for an offence(s) punishable under the Act, then is it obligatory on the part of the Judge concerned to give a definitive finding on the point that there is prima facie evidence available or not on record against an accused concerned while allowing or

rejecting bail under Section 438 Cr.P.C.?

(II) Whether the learned Special Judge is justified in rejecting the accused-appellant's bail under Section 438 Cr.P.C. outright by mentioning simply that the police have registered the case against him for the offences punishable under the Act ?

9. First, it is useful to reproduce Section 18 of the Act which reads as under :-

“18. Section 438 of the Code not to apply to persons committing an offence under the Act. – Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.”

A bare reading of the above provisions makes it clear that Section 438 Cr.P.C. is not applicable to persons committing the offence(s) under the Act.

10. In the case of Vilas Pandurang Pawar and another Vs. State of Maharashtra and others (2012) 8 SCC 795, the police registered a case against the accused persons under Section 3(1)(x) of the Act in addition to other offences punishable under the IPC on the basis of the written complaint of the complainant. The Additional Sessions Judge rejected their application under Section 438 Cr.P.C., giving reasons thereof. Aggrieved by the said order, the accused persons filed the bail application before the High Court of Bombay, which granted anticipatory bail to some of the accused persons. The order of

the High Court is challenged before the Supreme Court. In that case, the Supreme Court has considered the provisions and scope of Section 18 of the Act. The Supreme Court has made the following observations in paras 9 and 10 of the decision -:

9. Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been prima facie made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail.

Underlined by me

10. The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no court shall entertain an application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. The court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence.

Underlined by me

11. Let it be noted that in the case of Bachu Das Vs. State of Bihar (2014) 3 SCC 471 the Supreme Court has referred to the aforesaid observations and concurred with them.

12. From the aforesaid observations, it is crystal clear that the apex court of the views that it is mandatory on the part of the Judge concerned to give a definitive finding on the basis of the materials available before him that there is prima facie evidence to hold that the accused has committed or not committed the offence(s) punishable under the Act while rejecting or granting bail under Section 438 Cr.P.C., meaning thereby he cannot reject the bail outright writing simply in the order concerned that the police have registered the case against him for the offence(s) punishable under the Act, therefore, the bar under Section 18 of the Act is applicable.

13. Now, I advert to the present case. Upon the perusal of the impugned order, I find that the learned Special Judge has rejected the accused-appellant's bail application under Section 438 Cr.P.C. simply mentioning in the impugned order that the police have registered the case against him for the offences punishable under the Act in addition to the offences punishable under IPC. This approach of the learned Special Judge is unjust and improper in the light of the aforesaid observations made by the Supreme Court in Vilas Pandurang Pawar's case (supra).

14. Upon the perusal of the contents of the FIR of the case, it is self-evident that the genesis of the crime is not caste-based. Moreover, complainant-respondent No.2 has not stated

in the FIR that the accused-appellant committed marpeet with him or his family members with an ulterior motive to humiliate them because they belong to scheduled caste. It appears to me that the police registered the case for the offences punishable under the Act simply on the ground that the complainant-respondent No.2 belongs to the scheduled caste, which is an admitted fact in the case. Later, in order to justify the registration of the case under the Act, the Investigating Officer has added in the case diary statement of the complainant-respondent No.2 that the accused-appellant has abused him by saying "*Madarchod Chamra*". Let it be noted that the complainant-respondent No.2 has not explained away in his case diary statement as to why he has not mentioned the said abuse in the FIR. In the aforesaid background facts of the case, I hold that there is no material before me to adjudge that prima facie the accused-appellant has committed offences punishable under the Act. Consequently, the bar under Section 18 of the Act does not come into effect at this stage in the case. Thus, taking into consideration the facts of the case in totality, I hold that the accused-appellant is entitled to get bail under Section 438 Cr.P.C.

15. For the reasons and discussions supra, I allow this appeal and set aside the impugned order of rejection of bail. Accused-appellant **Chhaila Shukla** is directed to appear before the I.O. of the case on or before **23.03.2017** for interrogations and submission of documentary proofs of his permanent

address and contact numbers, if any and the I.O. is ordered that if he arrests him in the case under the aforesaid Sections, then he will release him immediately on bail upon his furnishing a personal bond in the sum of Rs.30,000/- (thirty thousand) with one solvent surety of the same amount to his satisfaction. Further he will abide by the conditions enumerated under Section 438(2) of the Cr.P.C. It is made clear that if he fails to appear before the I.O. within the stipulated period, then the order of grant of anticipatory bail shall automatically stand cancelled.

16. It is also made clear that the learned trial Judge shall not be influenced directly or indirectly by any of the observations made in this order while framing charge(s) against the accused-appellant.

17. Accordingly, this appeal is finally disposed of.

Certified copy as per rules.

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(Rajendra Mahajan)
Judge