

**HIGH COURT OF TRIPURA
AGARTALA**

AB No.27 of 2023

1. Shri Naresh Chandra Deb

Son of Late Pramod Chandra Deb, aged about 65 years,
Resident of 79 Tilla, opposite of Housing Board Quarter Complex,
P.O.-Kunjaban, Sub-Division-Sadar Agartala, P.S.-New Capital Complex,
District-West Tripura, Tripura, Pin-799006.

2. Shri Dulal Chandra Deb,

Son of Late Pramod Chandra Deb, aged about 62 years,
Resident of 79 Tilla, opposite of Housing Board Quarter Complex,
P.O.-Kunjaban, Sub-Division-Sadar Agartala, P.S.-New Capital Complex,
District-West Tripura, Tripura, Pin-799006.

....Applicant(s)

Versus

The State of Tripura

....Respondent(s)

For the Applicant(s) : Mr. S. Lodh, Advocate

For Respondent(s) : Mr. S. Ghosh, Addl. PP
Mr. P. Saha, Advocate

HON'BLE MR. JUSTICE ARINDAM LODH

Order

16/10/2023

Heard Mr. S. Lodh, learned counsel appearing for the applicants. Also heard Mr. S. Ghosh, learned Addl. PP appearing for the respondent-State and Mr. P. Saha, learned counsel appearing for the defacto complainant.

The applicants have filed the present application for releasing them on anticipatory bail under Section 438 of Cr.P.C since they are under serious apprehension that they will be arrested in connection with New Capital Complex Police Station case No.2022/NCC/167 dated 24.12.2022 under Sections 465/468/471/420/120B of the Indian Penal Code, 1860 and Section 3(1)(f)(g) of Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act, 1989.

One Smt. Chinamuni Marak had lodged a complaint before the Officer In-Charge, NCC Police Station stating that she was wrongfully dispossessed from a land by the applicants of this bail application. The complainant being a member of Scheduled Tribe(ST, for short) community, in her F.I.R. has stated that serious conspiracy was hatched by the applicants along with the officials of Revenue Department to dispossess her from the

land in question. In view of this, the Investigating Officer in course of his investigation has included Section 3(1)(f)(g) of Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act, 1989(here-in-after referred to as 'Act of 1989').

Mr. Lodh, learned counsel for the applicants has submitted that the applicants had never wrongfully dispossessed the complainant from the land in question. Learned counsel for the applicants has further submitted that at best, the complainant could have filed a civil suit against the erring persons or officials. It is further submitted that the applicants have instituted a suit for declaration of their right, title and interest and recovery of Khas possession of the land in question against Sri Biru Chandra Saha and Sri Niru Chandra Saha. On being finally adjudicated by the Court, the High Court held that neither the applicants being the plaintiffs of that civil suit have been able to prove their title and possession over the suit land nor the defendants i.e. Biru Chandra Saha and Niru Chandra Saha have been able to prove their adverse possession over the suit land and having held so, this Court had dismissed the suit instituted by the present applicants, namely, Naresh Chandra Deb and Dulal Chandra Deb. Mr. Lodh, learned counsel for the applicants has finally submitted that this is a fit case for granting anticipatory bail in favour of the applicants.

To oppose the present bail application and submissions advanced by learned counsel appearing for the applicants, Mr. S. Ghosh, learned Addl. PP has submitted that the instant application for granting anticipatory bail to the applicants is not maintainable in its present form and nature in view of Section 18-A of the Act of 1989. Moreso, it is an admitted position that the complainant belongs to ST community and she was ousted forcefully by the applicants as transpired in the F.I.R itself. Mr. Ghosh, learned Addl. PP has vehemently argued that the applicants had entered into a deep rooted conspiracy along with officials of Revenue Department to dispossess the complainant, and thus, the same attracts Section 3(1)(f)(g) of the Act of 1989.

I have also heard Mr. P. Saha, learned counsel appearing for the complainant, Smt. Chinamuni Marak.

Mr. Saha, learned counsel has submitted that the predecessor of the complainant was the original owner of the land in question and she was dispossessed from the land.

Having heard the submissions of the learned counsel appearing for the parties, this Court has put a pointed question to Mr. Ghosh, learned Addl. PP to justify the fact that the complainant was the original owner of the land in question wherefrom she was allegedly dispossessed, and when the complainant was dispossessed by the applicants.

Learned Addl. PP has fairly submitted that there is no document suggesting title of the complainant. Learned Addl. PP has further informed this Court that in the F.I.R. the complainant did not mention any date to establish as to when she was dispossessed by the applicants.

Mr. Saha, learned counsel for the complainant also has failed to produce any document conferring title of the complainant over the land.

On perusal of the records and the submissions, it comes to light that the complainant never made an endeavour to get her impleaded in the civil suit went on between the applicants of the instant bail application and Biru Chandra Saha and Niru Chandra Saha. After conclusion of the proceeding of the civil suit being finalized by judgment of this Court she suddenly woke up from slumber and approached the Revenue authorities claiming that her predecessor was the original owner of the land.

I have gone through the judgment passed by this Court. In my opinion, when the Court held that the applicants who were the plaintiffs of the civil suit failed to prove their title over the suit land disentitling their claim for recovery of possession and the defendants have been in possession of the suit land, then, it clearly suggests that the applicants were never in possession of the suit land. So, question of forcefully dispossessing the complainant from the land in question by the applicants never arose.

In furtherance thereof, the fact that Biru Chandra Saha and Niru Chandra Saha have been in possession of the suit land clearly proves that the complainant was never in possession of the land in question. So, question of her dispossession from the land in question also never arose. Accordingly, Section 3(1)(f)(g) of the Act of 1989 cannot in anyway be attracted against the applicants.

To attract Section 3(1)(f)(g) of the Act of 1989, *firstly*, it is to be proved that a person belonging to SC or ST community has been forcefully and wrongfully dispossessed from his/her land knowing fully well that he/she is a member of SC or ST community.

Now, as regards the question of maintainability, I have an opportunity to peruse the decision of the Hon'ble Supreme Court in ***P. Surendran vs. State by Inspector of Police***, reported in (2019) 9 SCC 154, where their Lordships have categorically held that to determine the maintainability of an application for granting anticipatory bail in SC or ST atrocity matters, the Court has to apply its judicial mind and Section 18-A of the Act of 1989 itself indicates application of judicial mind.

In the light of above discussion, I find this is a fit case to grant anticipatory bail to the applicants since none of the provisions of Act of 1989 attracts against the applicants.

Accordingly, it is directed that in the event of arrest, the applicants shall be released on bail by furnishing a bond of Rs. 25,000/- each with one surety each of the like amount to the satisfaction of arresting authority. However, it is directed that the applicants shall co-operate with the I.O. in course of investigation in all respects.

With the aforesaid observations and directions, the instant anticipatory bail applicant stands allowed and disposed.

JUDGE

Snigdha

SANJAY
GHOSH

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SANJAY GHOSH
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