

GAHC010261602024



2024:GAU-AS:12988

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : AB/3234/2024

ABDUS SADIQUE AND ANR
S/O ABDUL KARIM
R/O BADARPUR TOWN, WARD NO. 1, DIFHIRPAR
BUNDASHIL, KHADIMPARA
P.S. BADARPUR
DIST. SRIBHUMI, ASSAM

2: AHAD UDDIN
S/O ABDUL JABBAR
R/O RANGAPARA
P.O. ANGLARBAZAR
HARINADIK
DIST. SRIBHUMI
ASSA

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. J LASKAR,

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

19.12.2024

Heard Mr. J Laskar, learned counsel for the petitioners and Mr. B Sarma, learned Additional Public Prosecutor, Assam for the State.

2. The petitioners, namely, **(i) Abdus Sadique**, son of Abdul Karim, resident of Badarpur Town Ward No. 1, Difhirpar Bundashil, Khadimpara, P.S.-Badarpur, District-Sribhumi and **(ii) Ahad Uddin**, son of Abdul Jabbar, resident of Rangapara, Anglar Bazar, Harinadik, District-Sribhumi apprehending their arrest, have filed this application under Section 482 BNSS, 2023, praying for their pre-arrest bail in **Haflong Police Station Case No. 90/2024** under Section 75 BNS, 2023 read with Section 3(1)(w)(i) of the Schedules Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, corresponding to G.R. Case No. 198/2024.

3. As per the FIR dated 25.11.2024 lodged by the informant/complainant before the Officer-in-Charge of Haflong Police Station, the case is that in two different recent incidents the conduct of the petitioners with her show their intention of molesting her.

4. Initially said FIR dated 25.11.2024 of the informant/complainant was registered as Haflong Police Station P.E. No. 17/2024 dated 26.11.2024, the matter was enquired into and thereafter, on 01.12.2024, the same was registered as Haflong Police Station Case No. 90/2024 under Section 75 BNS, 2023 read with Section 3(1)(w)(i) of the Schedules Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. Section 3(1)(w)(i) of the said 1989 Act stipulates as follows: –

“(i) Intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient’s consent.”

6. Further, Section 18 of the said 1989 Act provides that:–

“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.”

7. Mr. J Laskar, learned counsel for the petitioners, by placing the WhatsApp communications between the informant and the accused persons of the case and by submitting that the FIR was filed on 25.11.2024 much after the incident, without explaining the delay of being the exceptional

circumstance, urged before the Court to consider the pre-arrest bail application of the petitioners in said Haflong P.S. Case No. 90/2024.

8. Mr. Laskar learned counsel for the petitioners, for the pre-arrest bail of the petitioners in said Haflong P.S. Case No. 90/2024 also relied on the decision of the Hon'ble Apex Court in the case of *Dr. Subhash Kashinath Mahajan Vs. State of Maharashtra*, reported in (2018) 6 SCC 454.

9. In the case of *Dr. Subhash Kashinath Mahajan*(supra), Hon'ble Supreme Court (A Bench consisting of two Hon'ble Judges) rendered its "Conclusions" as follows:

Conclusions

79. Our conclusions are as follows:

79.1. Proceedings in the present case are clear abuse of process of court and are quashed.

79.2. There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide. We approve the view taken and approach of the Gujarat High Court in *Pankaj D. Suthar [Pankaj D. Suthar Vs. State of Gujarat, (1992) 1 Guj LR 405]* and *N.T. Desai [N.T. Desai Vs. State of Gujarat, (1997) 2 Guj LR 942]* and clarify the judgments of this Court in *Balothia [State of M.P. Vs. Ram Kishna Balothia, (1995) 3 SCC 221]* and *Manju Devi [Manju Devi Vs. Onkarjit Singh Ahluwalia, (2017) 13 SCC 439]*;

79.3. In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the SSP which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinised by the Magistrate for permitting further detention.

79.4. To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.

79.5. Any violation of Directions 79.3 and 79.4 will be actionable by way of disciplinary action as well as contempt.

79.6. The above directions are prospective.

10. However, the Union of India approached the Hon'ble Apex Court in two of its Review Petitions, being Review Petition (Criminal) No. 228/2018 and Review Petition (Criminal) No.

275/2018 in the Criminal Appeal No. 416/2018 that relates to the case of *Dr. Subhash Kashinath Mahajan* (supra). Subsequently, the Hon'ble Supreme Court, in the case of *Union of India Vs. State of Maharashtra and others*, reported in (2020) 4 SCC 761 (comprising a Bench of three Hon'ble Judges), considering the issues involved in the case of *Dr. Subhash Kashinath Mahajan* (supra); the concept of protective discrimination in favour of downtrodden classes under Article 15(4) of the Constitution and also the parameters laid down by the Apex Court for exercise of powers under Article 142 of the Constitution of India and their Lordships by Judgment dated 01.10.2019, recalled the Directions issued by the said Court at Paragraphs 79.3 and 79.4 in the case of *Dr. Subhash Kashinath Mahajan* (supra) (noted above at Para-9) and also held that consequently, the Direction issued at Para 79.5 (noted above at Para-9) also vanishes and accordingly, allowed the review petitions to the extent above.

11. On perusal of the FIR dated 25.11.2024, the Court finds that there are prima facie materials against the petitioners and as provided under Section 18 of the Schedules Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, this pre-arrest bail application is not maintainable.

12. Accordingly, this bail application of the petitioners, namely, **(i) Abdus Sadique**, son of Abdul Karim, and **(ii) Ahad Uddin**, son of Abdul Jabbar in said **Haflong P.S. Case No. 90/2024**, being **not maintainable** under the provisions of Section 18 of the Schedules Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, **stands rejected**.

JUDGE

Comparing Assistant