



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.05.2017

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.O.P. (MD) No.5698 of 2017

- 1.Madasamy,
- 2.Manikandan,
- 3.Elango @ Elavarasan,
- 4.Umaiya muthu @ Umaiya muthu Ramalingam,
- 5.Kulanthaivelu @ Kulanthaipandi ... Petitioners/
Accused Nos.1,3,4,5 and 7

vs.

1. The Assistant Superintendent of Police,
Tuticorin Town Police Station,
Tuticorin.
2. State represented by
The Inspector of Police,
Thermal Nagar Police Station,
Tuticorin.
(Crime No.45 of 2017) ... Respondents/Complainants

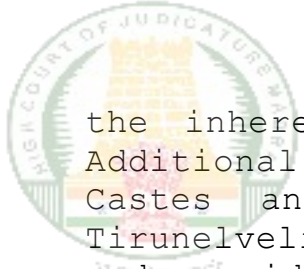
Prayer: The Criminal Original Petition is filed under Section 482 Cr.P.C, to direct the learned Additional District Judge No.II (Special Court for Scheduled Castes and Scheduled Tribes Prevention of Atrocities) Act, Tirunelveli District to accept the surrender of the petitioner and consider the Bail Application of the petitioner on the same day of his surrender itself in Crime No.45 of 2017 on the filed of the Inspector of Police, Thermal Nagar Police Station, Tuticorin dated 30.04.2017.

For Petitioners : Mr.V.Selva
For Respondents : Mr.A.P.Balasubramani,
Government Advocate (Crl.side)

O R D E R

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This Criminal Original Petition is filed by the petitioners/accused Nos. 1,3,4,5,7 under Section 482 by exercising



the inherent power of this Court by directing the learned II Additional District Judge No.II (Special Court for Scheduled Castes and Scheduled Tribes Prevention of Atrocities) Act, Tirunelveli District to accept the surrender of the petitioners and consider the Bail Application of the petitioners on the same day of their surrender itself in Crime No.45 of 2017 on the file of the Inspector of Police, Thermal Nagar Police Station, Tuticorin, dated 30.04.2017.

2. The learned counsel for the petitioners would submit that the co-accused already released on bail and the injured already discharged from the hospital and the most part of the investigation is over and therefore, the special Court may be directed to accept the surrender of the petitioners and consider their application on the same day.

3.The learned Government Advocate (Crl.Side) would submit that the first petitioner/A.1 is having 6 more previous cases and the petitioner No.5/A.7 is having one more previous case and the injured has already been discharged from the hospital and A.6 and A.8 were arrested and they are in custody. He further submitted that this petition under Section 482 Cr.P.C. is not maintainable.

4. Heard the rival submissions made by the learned Counsel appearing on either side.

5. On perusal of the entire records, it is seen that there is a specific overt act against all these petitioners in this case. Now the question for consideration is that when Section 18 of the SC/ST (PA) Amendment Act is clearly barred for exercising power under Section 438 Cr.P.C. for granting anticipatory bail, as to whether the petition filed under Section 482 Cr.P.C. is maintainable?

6. Section 18 of the Special Act clearly states that Section 438 Cr.P.c. is not apply to persons committing an offence under the Act. Therefore, once a case is registered under this Act, if no case at all is made out for arrest pending trial, the accused persons can always approach the High Court under Section 482 Cr.P.C. or under Article 226 of the Constitution of India for quashing the F.I.R. But now in the case on hand, by reading of para 8 of the petition filed by the petitioners is nothing but a petition for anticipatory bail by invoking the provisions under Section 482 Cr.P.C. before this Court.

7. At this stage, it would be worthwhile to refer to the decision of the Honourable Supreme Court in the case of **the State of Telangana Vs. Habib Abdullah Jeelani & Others** reported in **2017 (1) MLO (Crl.) 375 SC**. In that case, the Honourable Supreme Court has referred the decision rendered by the Constitution Bench,



wherein it has ruled that the claim for pre-arrest protection is neither a statutory nor a right guaranteed under Article 14, Article 19 or Article 21 of the Constitution of India. The larger Bench further submitted as follows:

"368. (17) Though it cannot be said that the High Court has no jurisdiction to entertain an application for bail under Article 226 of the Constitution and pass orders either way, relating to the cases under the 1987 Act, that power should be exercised sparingly, that too only in rare and appropriate cases in extreme circumstances. But the judicial discipline and comity of courts require that the High Courts should refrain from exercising the extraordinary jurisdiction in such matters."

19. The Allahabad High Court has taken similar view in several judgments, namely, **Satya Pal v. State of U.P.**²⁴, **Ajeet Singh v. State of U.P.**²⁵, **Lalji Yadav v. State of U.P.**²⁶, **Kamlesh Singh v. State of U.P.**²⁷ and **Natho Mal v. State of U.P.**²⁸. After referring to the same, **Radhakrishnan, J. opined** thus:-

"I may, however, point out that there is unanimity in the view that in spite of the fact that Section 438 has been specifically omitted and made inapplicable in the State of Uttar Pradesh, still a party aggrieved can invoke the jurisdiction of the High Court under Article 226 of the Constitution of India, being extraordinary jurisdiction and the vastness of the powers naturally impose considerable responsibility in its application. All the same, the High Court has got the power and sometimes duty in appropriate cases to grant reliefs, though it is not possible to pinpoint what are the appropriate cases, which have to be left to the wisdom of the Court exercising powers under Article 226 of the Constitution of India."

22. Sikri, J. in his concurring opinion stated that though the High Courts have very wide powers under Article 226, the very vastness of the powers imposes on it the responsibility to use them with circumspection and in accordance with the judicial consideration and well-established principles, so much so that while entertaining writ petitions for granting interim protection from arrest, the Court would not go on to the extent of including the provision of anticipatory bail as a blanket provision. It has been further observed that such a power has to be exercised very cautiously keeping in view, at the same time, that the provisions of Article 226 are a device to



advance justice and not to frustrate it. The powers are, therefore, to be exercised to prevent miscarriage of justice and to prevent abuse of process of law by the authorities indiscriminately making pre-arrest of the accused persons. In entertaining such a petition under Article 226, the High Court is supposed to balance the two interests. On the one hand, the Court is to ensure that such a power under Article 226 is not to be exercised liberally so as to convert it into Section 438 CrPC proceedings, keeping in mind that when this provision is specifically omitted in the State of Uttar Pradesh, it cannot be resorted to as back door entry via Article 226. On the other hand, wherever the High Court finds that in a given case if the protection against pre-arrest is not given, it would amount to gross miscarriage of justice and no case, at all, is made for arrest pending trial, the High Court would be free to grant the relief in the nature of anticipatory bail in exercise of its power under Article 226 of the Constitution. Keeping in mind that this power has to be exercised sparingly in those cases where it is absolutely warranted and justified.

23. We have referred to the authority in **Hema Mishra** (supra) as that specifically deals with the case that came from the State of Uttar Pradesh where Section 438 CrPC has been deleted. It has concurred with the view expressed in **Lal Kamendra Pratap Singh** (supra). The said decision, needless to say, has to be read in the context of State of Uttar Pradesh. We do not intend to elaborate the said principle as that is not necessary in this case. What needs to be stated here is that the States where Section 438 CrPC has not been deleted and kept on the statute book, the High Court should be well advised that while entertaining petitions under Article 226 of the Constitution or Section 482 CrPC, exercise judicial restraint. We may hasten to clarify that the Court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, has the jurisdiction to quash the investigation and may pass appropriate interim orders as thought apposite in law, but it is absolutely inconceivable and unthinkable to pass an order of the present nature while declining to interfere or expressing opinion that it is not appropriate to stay the investigation. This kind of order is really inappropriate and unseemly. It has no sanction in law. The Courts should not obstruct unscrupulous litigants from invoking the inherent jurisdiction of the Court on the drop of a hat to file an application



for quashing of launching an FIR or investigation and then seek relief by an interim order. It is the obligation of the court to keep such unprincipled and unethical litigants at bay.

24. It has come to the notice of the Court that in certain cases, the High Courts, while dismissing the application under Section 482 CrPC are passing orders that if the accused-petitioner surrenders before the trial magistrate, he shall be admitted to bail on such terms and conditions as deemed fit and appropriate to be imposed by the concerned Magistrate. Sometimes it is noticed that in a case where sessions trial is warranted, directions are issued that on surrendering before the concerned trial judge, the accused shall be enlarged on bail. Such directions would not commend acceptance in light of the ratio in **Rashmi Rekha Thatoi** (supra), **Gurbaksh Singh Sibbia** (supra), etc., for they neither come within the sweep of Article 226 of the Constitution of India nor Section 482 CrPC nor Section 438 CrPC. This Court in **Ranjit Singh** (supra) had observed that the sagacious saying "a stitch in time saves nine" may be an apposite reminder and this Court also painfully so stated."

8. It is settled position that what cannot be done directly, cannot be done indirectly. While exercising a statutory power, a Court is bound to act within the four corners thereof. The statutory exercise of power stands on a different footing than exercise of power of judicial review. The prayer sought for in this petition is nothing but invoking the provision of Section 438 Cr.P.C., indirectly. Therefore, considering the facts and circumstances of the case and also in the light of the above decision made by the Honourable Supreme Court as stated supra, this Court is not inclined to entertain this petition. Hence, this Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Additional District Judge No.II
(Special Court for Scheduled Castes and
Scheduled Tribes Prevention of Atrocities) Act,
Tirunelveli District.



2. The Assistant Superintendent of Police,
Tuticorin Town Police Station,
Tuticorin.

3. The Inspector of Police,
Thermal Nagar Police Station,
Tuticorin.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Myr/ssl

vb/mr/sar3/26.05.2017/6p/5c

CRL.O.P. (MD) No.5698 of 2017

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