

CRIMINAL PETITION No. 1927 of 2017

ORDER:

This Criminal Petition under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C. '), is filed to enlarge the petitioner/accused on pre-arrest bail since he is apprehending arrest in connection with Crime No.338 of 2015 of Police Station, Jagathgiringutta, Cyberabad, registered for the offences punishable under Sections 354, 506 IPC and Section 3(1)(x) of S.C. and S.T. (POA) Act.

The case of the prosecution is that the daughter of the de facto complainant-A.Swetha aged 17 years while studying intermediate in Si Gayathri Junior College (Private College) used to go to college by bus, when she got down the bus, petitioner-accused Sai used force her to love him. On 05.12.2016 at about 6.30 P.M. when she was at the bus stand Gajularamaram after getting down from the bus and while proceeding to her residence, the petitioner came to her and caught hold of her hand, forced her to love him, while threatening to pour acid on her face and abused her in filthy language in the name of her caste "Osey Lambadi dana, Lambadi dana", likewise the mother of the petitioner also abused the complainant's wife as "Lanja". As the victim girl and the wife of the de facto complainant belongs to scheduled tribe and they are Lambadas by caste and whereas, the petitioner does not belong to either scheduled caste or scheduled tribe.

The main contention of the counsel for the petitioner is that the petitioner is a mentally retarded person suffering from illness and that the complaint was lodged only to grab the property of the government and earlier father of the petitioner also made complaint to the Commissioner of Police and Collector to take action against the de facto complainant vide complaints dt.20.9.13 and 25.04.2015. Thus, the petitioner did commit no offence and prayed for enlargement of the petitioner on bail in the event of his arrest.

The learned Public Prosecutor for the State of Telangana would contend that the eyewitnesses who were examined as LWs.4 to 6 during examination under Section 161(3) Cr.P.C. stated that in their presence the petitioner caught hold the hand of the daughter of the de facto complainant and forced her to love him threatening to pour acid in case she refuses to love him and abused her raising her caste name in the public place and therefore, Section 18 of the SCs & STs (POA) Amendment Act, 2015 would not permit to grant bail under Section 438 Cr.P.C. and prayed for dismissal of the petition.

Undoubtedly, the victim girl and the de facto complainant belong to schedule tribe, Lambada by caste. Whereas, the petitioner does not belong to either scheduled caste or scheduled tribe. But, the allegation is that he caught hold of her hand and forced her to love him with a threat to pour acid on her which would attract an offence punishable under Sections 354(d), 354(a) of IPC and the provisions of special enactment i.e. Scheduled Castes and Scheduled Tribes (POA), Act.

The complaint discloses that the petitioner caught hold of her hand and forced her to love him and insulted her by abusing her in filthy language by touching her caste name and also the mother of the petitioner abused the wife of the de facto complainant. But, she is not a party to this petition. However, when the allegations made in the complaint on its face would show that the petitioner committed an offence punishable under the provisions of Scheduled Castes and Scheduled Tribes (POA), Act, this Court cannot exercise its powers when there is an interdict to grant pre-arrest bail under Section 18 of the SCs & STs (POA) Amendment Act, 2015.

In the present case, one of the offences allegedly committed by the petitioner is punishable under Section 3 (1) (x) of the SCs and STs (POA) Act. No doubt, there is a clear bar to grant pre-arrest bail directing the concerned police official to release the accused who committed offences punishable under the provisions of SCs. and STs. (POA) Act, but the law declared by the Apex Court in **Vilas Panduranga Pawar v. State of Maharashtra**¹ carved out certain exceptions to such interdict and held that Section 18 of the SCs. and STs. (POA) Act creates a bar invoking Section 438 of Cr.P.C. However, a duty is cast on the court to verify the averments in the complaint and to find out whether any offence under Provisions of the SC/ST (POA) 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. When an

¹ (2012) 8 SCC 795

offence is registered against a person under the provisions of the SC/ST (POA) Act, no Court shall entertain application for anticipatory bail, unless it *prima facie* finds that such an offence is not made out.

If the principle laid down in the above judgment is applied to the present facts of the case, it is the duty of the Court to find out whether the petitioner committed the offence punishable under the provisions of SCs. and STs. (POA) Act *prima facie*. If the Court concludes that no offence is committed by the petitioners, the Court can exercise its discretionary jurisdiction conferred on it by Section 438 of Cr.P.c. and grant pre-arrest bail.

In view of the law declared by the Apex Court, it is the duty of the court to verify the averments in the complaint to find out whether an offence under Section 3(1)(r) (s) of the SCs & STs (POA) Amendment Act, 2015 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. When an offence is registered against a person under the provisions of the SCs/STs POA Amendment Act, 2015, no Court shall entertain application for anticipatory bail, unless it *prima facie* finds that such an offence is not made out.

It is contended that the petitioner is a mentally retarded person undergoing treatment. In support of it, he produced a slip regarding review day (Friday) issued by hospital, but it does not disclose anything about the treatment being undergone by the

petitioner. Therefore, it is difficult to accept that the petitioner is suffering from serious mental ailment and constant treatment is required on every Friday.

Considering the facts and circumstances of the case, I find that it is not a fit case to grant pre-arrest bail to the petitioner.

In the result, this Criminal Petition is dismissed.

Miscellaneous petitions, if any, pending in this criminal petition, shall stand closed.

Date:30.03.2017
ccm

M. SATYANARAYANA MURTHY, J



THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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