

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.3306 OF 2018

ORDER:

This criminal petition is filed under Section 438 Cr.P.C to grant pre-arrest bail to the petitioners herein apprehending their arrest in connection with Crime No.133 of 2017 on the file of Devanakonda Police Station, Kurnool District, for the offences punishable under Sections 323,354 r/w 34 IPC & Section 3(1)(S) of SC/ST POA Act, 2015.

As per the complaint, one Prathap and Bhargav/A-1 & A-2 allegedly abused the defacto complainant raising his caste name and insulted him in the eye of public and on that, the defacto complainant lodged a report with the police. The present petition is filed for grant of pre-arrest bail to the petitioners. But, in view of the bar under Section 18 of SC/ST POA Act, no anticipatory bail can be granted. However, it is the contention of the learned counsel for the petitioners that, petitioner nos.2 to 4 are not arrayed as accused. But, the police are trying to arrest these petitioners based on the material collected during investigation.

To grant a pre-arrest bail, there must be a reasonable apprehension and in the absence of any such reasonable apprehension, blanket order of bail cannot be granted to the petitioners 2 to 4.

In **R. Mahdusudhan v. State of Karnataka and another**¹, the Apex Court held that, in view of the mandate under Section 18 of SC/ST Act, trial court should not have granted anticipatory bail,

¹ (2017) 14 SCC 233

since investigation is completed and charge sheet is filed and directed the appellants therein must surrender before trial court and seek regular bail raising all contentions available to them before the Court and also directed that bail application has to be decided on merits on date of surrender only.

Therefore, by following the principles in the above judgment, the petitioner no.1/A-2 is at liberty surrender before the Special Court for Trial for SC/ST POA Act and seek regular bail raising all his contentions available to him. Further, the other petitioners/A-3 to 5 against whom no crime is registered are entitled to renew their request at appropriate time, if any crime is registered against them.

Learned counsel for the petitioners placed reliance on the judgment of the Apex Court in **Dr. Subhash Kashinath Mahajan v. State of Maharashtra**², and contended that a preliminary enquiry is required to be conducted by the police officials as the accused is punishable for the offence punishable under SC/ST POA Act. But, this judgment is now under challenge before the Full Bench of the Supreme Court, since the Division Bench overlooked another judgment of the Supreme Court in **Manju Devi v. Onkarjit Singh Ahluwalia**³ and passed order.

Therefore, as on today, the present petitioners are not entitled to claim pre-arrest bail, in view of the pendency of the matter before the Full Bench of the Supreme Court in **Dr. Subhash Kashinath Mahajan v. State of Maharashtra** (referred supra).

² SLP (Crl.) No.5661 of 2017 dated 30.03.2018

³ 2017 Crl.L.J. 2879

In the result, the criminal petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:27.03.2018

SP

