

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.4295 OF 2018

ORDER:

This criminal petition is filed under Section 438 Cr.P.C to grant pre-arrest bail to the petitioners/Accused in Crime No.47 of 2018 of Kothavalasa Police Station, Vijayanagaram District, registered for the offence punishable under Section 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act, 2015.

2. The *de facto* complainant - Uppada Venkata Ramana, who is member of the scheduled caste, lodged a report alleging that on 22.10.2017 at about 10.30 AM while survey is being conducted with the help of Mandal Surveyor and others, the petitioners came to the scene of offence and abused them in filthy language and obstructed them from conducting survey of the land. While abusing the Mandal Surveyor and two others, the petitioners also abused the *de facto* complainant as 'mala lanja kodaka' 'evadi bhoomi denguthavu'. On the strength of the complaint, the police registered the above crime and issued FIR.

3. The main contention of the petitioners before this Court is that the crime was registered at about 11.45 PM and whereas the earlier incident of obstructing public servant at about 10.30 AM and that the said incident is not within the public view. When the incident was not within the public view, it would not attract the offence punishable under Section 3(1)(r)(s) of the SC & ST (POA) Act. The bar under Section 18 of the SC & ST (POA) Act would not come in the way of granting anticipatory bail as there is no material to

conclude *prima facie* that the petitioners committed offence punishable under the SC & ST (POA) Act.

4. Learned counsel for the petitioners relied on judgment of this Court in **Smt K.Padma Reddy v Station House Officer, Bellampalli and others**¹ and another judgment of the Apex Court in **Subhash Kashinath Mahajan v State of Maharashtra and another**². On the strength of the principles laid down in the above judgments, learned counsel contended that when the offence would not constitute under the provisions of the SC & ST (POA) Act, *prima facie*, the petitioners are entitled to claim pre-arrest

5. Whereas learned Additional Public Prosecutor contended that when the petitioners abused the *de facto* complainant raising the caste name in the presence of others, it would attract the offence punishable under Section 3(1)(r)(s) of the SC & ST (POA) Act and it is in the public view, prayed to **dismiss** the criminal petition.

6. As seen from the **allegations** made in the complaint, the incident of insulting the *de facto* complainant – Uppada Venkata Ramana took place in the presence of the Mandal Surveyor, VRO and another, who are public servants. Abusive language was used against the *de facto* complainant only in the presence of the Mandal surveyor and others, who are public servants and who were surveying the land on 22.07.2017 commenced at about 10.30 AM. Therefore, it is difficult to conclude at this stage that the insult was not in public view to attract the offence punishable under Section 3(1)(r)(s) of the SC & ST Act as the incident took place in the presence of three other persons, allegedly.

¹ 2004 Cr.L.J 503

² 2018 Law Suit (SC) 233

7. Learned counsel for the petitioners draw the attention of this Court to the Judgment in **Smt K.Padma Reddy's** case referred supra, where this Court made it clear when insult was not within the public view, it would not attract the offence punishable under Section 3(1)(r)(s) of the SC &ST Act. There is no dispute with regard to the law declared by this Court. On the other hand, in the recent judgment of the Apex Court in **Subhash Kashinath Mahajan's** case referred supra, it is made clear that when the material on record does not constitute any offence under the provisions of the SC & ST Act, *prima facie* the Court can exercise its power to grant pre-arrest bail and Section 18 of the SC & ST Act do not come in the way to protect the right of the public servant, who was implicated.

8. In **Manju Devi v Onkarjit Singh Ahluwalia @ Omkarjeet Singh and others³**, the Apex Court laid down certain principles and made it clear that in view of bar under Section 18 of SC & ST Act, anticipatory bail cannot be granted to the accused and laid down certain principles. But this judgment was not referred in later judgment in **Subhash Kashinath Mahajan's** case referred supra, which is pending for consideration before the larger Bench. But mostly in **Subhash Kashinath Mahajan's** case referred supra, the acts of the public servant to attract the offence was discussed and on the basis of the acts committed during discharge of duties as public servant as controlling officer, such directions came to be issued. Even assuming for a moment that the bar under Section 18 of the SC & ST Act would not come in the way of this Court to grant pre-arrest bail, only in case where the Court finds that there is no material *prima facie* to constitute offence.

³ 2017(2) ALD (ctrl) 272 (SC)

9. Here, in this case, the incident took place in the presence of VRO and other persons and it is within the public view, *prima facie*. Therefore, this contention of learned counsel for the petitioners holds not substance and in view of bar under Section 18 of SC & ST Act, I am not inclined to exercise jurisdiction under Section 438 Cr.PC. as grant of pre-arrest bail is not a matter of routine and it is a matter of an exception. Moreover, the Apex Court highlighted the purpose of granting pre-arrest bail in **Gurbaksh Singh Sibbia and Others v. State Of Punjab**⁴.

10. Power under Section 438 Cr.P.C is purely discretionary and the Court has to exercise its power judicially based on settled principles, but the circumstances may vary from case to case and the law regarding grant of bail is literally discussed by the Constitutional Bench in **Gurbaksh Singh Sibbia** case as the power of granting 'anticipatory bail' is somewhat extraordinary in character and it is only in exceptional cases where it appears that a person might be falsely implicated, or a frivolous case might be launched against him, or "there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail" that such power is to be exercised.

11. No hard and fast rules can be laid down in discretionary matters like the grant or refusal of bail, whether anticipatory or regular bail. The Apex Court further held that, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala

⁴ 1980 AIR 1632

fides; told, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. Therefore, anticipatory bail can be granted even in serious cases like economic offences and States should have no consideration for grant or refusal of grant of anticipatory bail, as there can be no presumption that the wealthy and the mighty will submit themselves to trial and that the humble and the poor will run away from the course of justice, any more than there can be a presumption that the former are not likely to commit a crime and the latter are more likely to commit it. Therefore, while dealing with the application for grant of pre-arrest bail or anticipatory bail, the Court must take into consideration the guidelines issued in **Gurbaksh Singh Sibbia** case. Though, according to the judgment of the Apex Court, even in economic offences, the Court can grant anticipatory bail, subject to satisfaction of other grounds.

12. Later judgment in **Siddharam Satlingappa Mhetre vs State Of Maharashtra And Ors**⁵, the Apex Court laid down the following guidelines to grant pre-arrest bail.

⁵ (2011) 1 SCC 694

- i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii) The antecedents of the applicant including the facts as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii) The possibility of the applicant to flee from justice;
- iv) The possibility of the accuser's likelihood to repeat similar or the other offences;
- v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
- vi) Impact of grant of anticipatory bail particularly in case of large magnitude affecting a very large number of people;
- vii) The Courts must evaluate the entire available material against the accused very carefully. The Court must also clearly comprehend the exact role of the accused in the case. The case in which accused is implicated with the help of Section 34 and 149 of IPC, the Court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- ix) The Court to consider reasonable apprehension of tampering of the witnesses or apprehension of threat to the complainant;
- x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

13. Even if those guidelines are applied to the present facts of the case and taking into consideration of gravity of the offence, I am not inclined to grant pre-arrest bail to the petitioners, who are allegedly,

committed the offence and consequently, the criminal petition is liable to be dismissed.

14. In the result, the criminal petition is dismissed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

18.04.2018
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