

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.5558 of 2018

ORDER :

Heard the learned counsel for the petitioner/ A.2 and the learned Public Prosecutor and perused the prayer in the bail application for anticipatory bail sought and the First Information Report in Cr.No.125 of 2018 for offences punishable u/ sec.306 r/w 34 IPC and 3(2)(v) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act (for short, 'the Act') and other material on record.

It is needless to say the intention is the criteria without which no findings could be made out as held by the latest expression of the Apex Court in Asharfi v. State of Uttar Pradesh¹. Leave apart the latest expression of the Apex Court in Dr. Subhash Kashinath Mahajan v. State of Maharashtra² wherein it was held as follows:

“that in absence of any other independent offence calling for arrest, in respect of offences under the Atrocities Act, no arrest may be effected, if an accused person is a public servant, without written permission of the appointing authority and if such a person is not a public servant, without written permission of the Senior Superintendent of Police of the District - such permissions must be granted for recorded reasons which must be served on the person to be arrested and to the concerned court - As and when a person arrested is produced before the Magistrate, the Magistrate must apply his mind to the reasons recorded and further detention should be allowed only if the reasons recorded are found to be valid - To avoid false implication, before FIR is registered, preliminary enquiry may be made whether the case falls in the parameters of the Atrocities Act and is not frivolous or motivated.”

¹ (2018) 1 SCC 742

² 2018 (2) ALT 50 SC

The Apex Court also made observations in saying 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*. Having approved the view taken and approach of the Gujarat High Court in *Pankaj D. Suthar v. State of Gujarat*³ and *Dr. N.T. Desai v. State of Gujarat*⁴ and clarified the judgments of the Apex Court in *State of M.P. v. Ramkishan Balothia*⁵ and *Manju Devi v. Onkarjit Singh Ahluwalia*⁶, it is observed that besides the above direction 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. It is also stated that any violation of direction supra, particularly of the arrest and preliminary enquiry concerned, will be actionable by way of disciplinary action as well as contempt and these directions are prospective.

Having regard to the above, the Criminal Petition is disposed of. In the event of any arrest of the petitioner is required for the provisions of the said Act supra, they strictly follow the guidelines formulated in *Dr. Subhash Kashinath Mahajan supra*.

Consequently, miscellaneous petitions, if any shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 05.06.2018
vvr

³ (1992) 1 GLR 405

⁴ (1997) 2 GLR 942

⁵ (1995) 3 SCC 221

⁶ (2017) 13 SCC 439