IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

FRIDAY, THE 04TH DAY OF DECEMBER 2020 / 13TH AGRAHAYANA, 1942

CRL.A.No.771 OF 2020

AGAINST THE ORDER/JUDGMENT IN CRMP 140/2020 OF SPECIAL COURT-OFFENCES UNDER SC/ST (POA) ACT,1989,KOTTARAKKARA

CRIME NO.2357/2020 OF ERAVIPURAM POLICE STATION , Kollam

APPELLANT/S:

RAHAS
AGED 18 YEARS
S/O. JASEENA, VAYALITHOPE, NATIONAL NAGAR 214
POLAYATHODE, PATTATHANAM P.O, KOLLAM 691 021

BY ADVS.
SMT.M.R.JAYALATHA
SMT.K.VINAYA

RESPONDENT/S:

1 **STATE OF KERALA**
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM 682 031

2 **ASSISTANT COMMISSION OF POLICE,**
KOLLAM CITY, KOTTARAKKARA, KOLLAM DISTRICT, 691 506

3 **STATION HOUSE OFFICER,**
ERAVIPURAM POLICE STATION, ERAVIPURAM P.O, KOLLAM DISTRICT 691 011

4 **ADDL.R4 XXX**
IMPLEADED AS ADDITIONAL R4 AS PER ORDER DATED 4/10/2020 IN CRL.MA NO.3/2020.

OTHER PRESENT:

SR.PP.C.S.HRITHWIK

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 26-11-2020, THE COURT ON 04-12-2020 DELIVERED THE FOLLOWING:

V.G.ARUN, J.

Crl.A.No. 771 of 2020

Dated this the 4th day of December, 2020

JUDGMENT

Appellant is the accused in Crime No.2357 of 2020 registered at the Eravipuram Police Station, alleging commission of offences punishable under Sections 363, 366 and 370 of IPC and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short 'SC/ST (PoA) Act'). According to the prosecution, the accused had fallen in love with the minor daughter of the first informant and had kidnapped the girl on 2.8.2020 and made the minor girl to stay with him overnight, thereby committing the alleged offences. During the course of investigation, the offence under Section 11(iv) read with 12 of the Protection of Children from Sexual Offences Act was also incorporated.

2. The appellant filed Crl.M.P.No.140 of 2020 before the Special Judge, Special Court for SC/ST (POA) Act Cases, Kottarakkara seeking pre-arrest bail. By Annexure A2 order, the learned Special Judge dismissed the petition. Hence, the appeal.

3. The learned counsel for the appellant submitted that the appellant and the victim girl were in love and that on 2.8.2020, the minor girl had gone in search of the appellant and met him at Kollam

by around 7.30 p.m. In spite of the appellant's best efforts, the girl refused to go back to her house and threatened to commit suicide, if compelled to do so. The appellant informed the matter to the mother of the girl, but she was not prepared to take her daughter back. Circumstances being such, the girl had to stay overnight under the appellant's care and protection. It was the appellant's parents who took the girl to the Eravipuram Police Station the next day. Other than giving shelter to the girl for a night, that too with the permission of his parents, the appellant has not committed any of the alleged offences.

4. The learned Special Judge, after carefully going through the case diary, found *prima facie* evidence regarding commission of the alleged offences. The contention of the Public Prosecutor that granting of pre-arrest bail to the appellant would hamper the investigation also, found favour with the Special Judge.

5. On a careful consideration of the contentions and the impugned order, the finding in the impugned order, of the offences committed by the appellants being serious enough to deny pre-arrest bail, is liable to be affirmed. As held by the Honourable Supreme Court in ***Prithvi Raj Chauhan v. Union of India*** [(2020)4 SCC 717], anticipatory bail for offences under the Act can be granted only when no *prima facie* case is not made out. The Apex Court has alerted the courts to be cautious while exercising such power. The learned Special Judge after perusing the FIS, FIR and other materials, found them to be

sufficient to attract the alleged offences. I find no reason to arrive at a different conclusion, so as to grant the benefit of pre-arrest bail to the appellants by whittling down the rigor of Section 18A(2) of the SC/ST (PoA) Act.

In the result, the criminal appeal is dismissed.

Sd/-
V.G.ARUN, JUDGE

vgs

APPENDIX

PETITIONER'S/S EXHIBITS:

ANNEXURE A1	**A TRUE COPY OF THE RELEVANT PAGES OF FIRST INFORMATION REPORT IN FIR/CRIME NO. 2357 OF 2020 ON THE FILES OF ERAVIPURAM POLICE STATION, KOLLAM DISTRICT DT 3-8-2020**
ANNEXURE A2	**A CERTIFIED COPY OF THE ORDER PASSED BY THE LEARNED SPECIAL COURT FOR SC/ST(POA) ACT CASES, KOTTARAKKARA IN CRL.M.P NO. 140/2020 DATED 25-09-2020**