

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2020

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.16219 of 2020

1.Rajendran @ Gurunathan
2.R.Manojkumar
3.Manimegalai
4.R.Chinnamani
5.R.Madhammal
6.R.Savithri
7.C.Senniymmal

... Petitioners

Vs.

The State Represented by,
The Inspector of Police,
Bangala Pudur Police Station,
Erode. (Crime No.432 of 2020)

...Respondent

Prayer: Criminal Original Petition filed under Section 438 Cr.P.C., to enlarge the petitioners on bail, in the event of their arrest in Crime No.432 of 2020 on the file of the respondent police.

For Petitioners : Mr.V.Balamurugane

For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

(The case has been heard through video conference)

The petitioners, who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 147, 148, 294(b), 323, 324, 506(ii) of IPC, r/w Section 4 of the Prohibition of Women Act and r/w Section 3(1) (r) & 3(1) (s) of the Scheduled Caste and schedule tribes (Prevention of atrocities) Amendment Act 2015, in Crime No.432 of 2020 on the file of the respondent police, seek anticipatory bail.

2. The case of the prosecution as per the defacto complainant/Ranganathan is that he is a resident of Elur, Arichana colony and he was working as a salesman in the fair price shop. Further allegation is that he belong to the SC community and that his mother who belong to the ruling party contested as a ward member and got elected. Due to election of his mother, there was dispute between the defacto complainant on one side and one Selvam, who belong to BC community and the petitioners/accused who belong to the same community of the defacto complainant and there used to be frequent quarrel between them. Whiles, on 21.05.2020, the petitioners/accused along with said Selvam who belong to different community had abused the father of the defacto complainant calling

him by case and they also assaulted the defacto complainant's mother and sister and attempted to outrage their modesty. Hence, the complaint.

3. The learned counsel for the petitioners would submit that the petitioners are innocent and they have been falsely implicated in this case on account of election rivalry, he would further submit that even as per the FIR, the dispute is alleged to have been taken between the parties on account of election dispute and that there is absolutely no allegation that the petitioners assaulted the defacto complainant and his family members with an intention to humiliate him for the reasons that the defacto complainant and his family members belong to such caste. He would further submit that the petitioners themselves belong to SC community and that it is not a case, the petitioners attempted to humiliate the defacto complainant on account of him belonging to schedule caste.

4. The learned counsel would further submit that the petitioners have filed the community certificate to prove that they belong to the SC community. Further when the allegation do not make out a prima facie case for the offence under SC/ST (Prevention of Atrocities) Act, the petitioners are entitled to anticipatory bail and the bar created under Section 18 of the Act shall not apply..

5. The learned counsel for the petitioners in support of his contention relied on the judgment of the Hon'ble Apex Court in Prathvi Raj Chawhan vs. Union of India dated 10.02.2020 and in Hitesh Verma v. The State of Uttarakhand and another dated 05.11.2020 in CrI.A.No.707 of 2020.

6. The learned Additional Public Prosecutor would submit that due to election dispute, the petitioners who belong to SC community along with main accused one Selvam @ Krishnamoorthy abused the defacto complainant's father calling him by caste name and they also outraged the modesty of the mother and the sister of the defacto complainant by tearing their blouses. Further he would fairly submit that the main allegation are attributed to the first accused Selvam who belong to different community and as far as the petitioners are concerned though they belong to the same community as that of the defacto complainant they also assaulted the defacto complainant's father, mother and sister. However, he opposed for grant of anticipatory bail to the petitioners.

7. Heard both sides and perused the First Information Report.

8. From the perusal of materials on record filed along with the petition it is seen that the petitioners belong to SC community. The perusal of FIR shows that A1 who belongs to a different community is the only person who had abused the defacto complainant and his father calling him by caste name and there is no allegation as against the petitioners for making out a prima facie case for offence under the provisions of the SC/ST (PA) Act. Further the occurrence is stated to have happened on account of enmity due to election to local body.

9. There is no dispute about the fact that as per Section 18 of the Act there is a bar for grant of anticipatory bail for the Offences punishable under the act. However, the Hon'ble Supreme Court in PRATHVI RAJ CHAUHAN and Union of India reported in (2020) 4 SCC 727 has considered the scope of section 18 of the SC ST Act and the observed that:

"concerning the applicability of provisions Section 438 Cr.P.C., shall not apply to the Act. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act the bar created by section 18 and 18A (i) shall not apply".

".... It would only add a caveat with the observation and emphasize that while considering any application seeking pre-arrest bail, High Court has to balance two interests i.e. The power is not so used to convert the jurisdiction under Section 438 of Cr.P.C., but that it is used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR, and if such orders are not made in similar cases, the result would inevitably be a miscarriage of justice or abuse of process of law. Therefore, I consider such stringent terms, otherwise contrary to the philosophy of bail, absolutely essential, because a liberal use of the power to grant pre-arrest bail would defeat the intention of parliament."

10. Taking into consideration the facts and submissions of the learned Counsel, this Court is inclined to grant anticipatory bail to the petitioners subject to the following conditions;

11. Accordingly, the petitioners are ordered to be released on bail in the event of their arrest or on their appearance, within a period of fifteen (15) days from the date on which the copy of the order is made ready, before the learned Principal District Judge, Erode, on condition that each of the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties, for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:

[a] the petitioners and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioners shall report before the respondent police every day at 10.30 a.m., for a period of two weeks and thereafter every Monday at 10.30 a.m., until further orders.

[c] the petitioners shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioners shall not abscond either during investigation or trial.

[e] On breach of any of the aforesaid conditions, the learned Magistrate/ Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].

[f] If the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

8.With the above directions, this Criminal Original Petitions are ordered.

-sd/-

11/12/2020

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL DISTRICT JUDGE,
ERODE.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3. THE INSPECTOR OF POLICE,
BANGALA PUDUR POLICE STATION,
ERODE.

CC to M/S.V.BALAMURUGANE Advocate on payment of necessary charges

CRL OP.16219/2020

Date :11/12/2020

RVR 21/01/2021