

06.08.2021

CRM 1720 of 2021

Court No.28
Item No. PB - 06
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(ANTIBAIL – REJECTED)

In Re:- An application for **Anticipatory Bail** under Section **438** of the Code of Criminal Procedure filed on 10.02.2021 in connection with Ratua Police Station Case No. 663 of 2020 dated 31.12.2020 under Sections 447/325/354/307/373/34 of the Indian Penal Code read with Section 3(1)(x)(xi) of The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989. (BGR No. 3112 of 2020)

and

In the matter of: **Ganesh Chandra Singha & Ors.**

.....Petitioners

Mr. Sabyasachi Banerjee, Advocate

Ms. Diksha Ghosh, Advocate

.....for the Petitioners

Mr. Ranabir Roy Chowdhury, Advocate

Mr. Mainak Gupta, Advocate

.....for the State

The petitioners have filed the instant application for bail in connection with Ratua Police Station Case No. 663 of 2020 dated 31.12.2020 under Sections 447/325/354/307/373/34 of the Indian Penal Code read with Section 3(1)(x)(xi) of The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Before dealing with the instant application under Section 438 of the Code of Criminal Procedure, it is necessary to state the background of this case in brief.

The petitioner no. 1 is a recorded raiyat in respect of a piece of land. He purchased the said land from one Sonai Mondal, a member of scheduled caste or schedule tribe, after obtaining necessary permission from the competent authority. The record of rights was prepared in the name of the petitioner no. 1 in 1980. Subsequently, some members of scheduled caste and scheduled tribe community tried to grab the said land forcibly. When the petitioner no. 1 tried to resist them, they mercilessly assaulted him tying him against a tree on the field. The petitioner no. 1 filed a

written complaint before the local police station against the offenders including the de facto complainant under various penal provisions including Section 307 of the Indian Penal Code. After one month of institution of the said case, the de facto complainant of this case filed a complaint under Section 156(3) of the Code of Criminal Procedure under various penal provisions of the Indian Penal Code read with Section 3(1)(x)(xi) of The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'said Act').

It is submitted by Mr. Banerjee, learned Advocate for the petitioners, that the complaint lodged by one of the offenders of the previous case is the outcome of a retaliatory action with false and frivolous allegation.

Learned Public Prosecution-in-charge on the other hand, submits that there is specific ingredients of offence under Section 3(1)(x)(xi) of The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the materials in the case diary suggests commission of such offence against the petitioners and so he raised objection against the prayer for anticipatory bail.

Mr. Banerjee, learned Advocate relies upon a decision of the Hon'ble Supreme Court in the case of ***Prathvi Raj Chauhan Vs. Union of India*** reported in ***(2020) 4 SCC 727*** in support of his contention that the provisions of Section 438 of the Code of Criminal Procedure may not apply to the cases under The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the said Act, the power created by Sections 18 and 18(A)(I) shall not apply. It is contended by Mr. Banerjee that prima facie there is no material of

offence under the said Act as alleged against the petitioners.

We had an occasion to peruse the enlightening observations made by the Judge being a member of that Bench writing a concurrent judgment wherein it has been held that balance has to be strike between the power used under Section 438 of the Code of Criminal Procedure and the gravity of the offence committed under the said Act. It would be apposite and relevant to quote the observations recorded in paragraph 33 of the said report which runs thus:-

I would only add a caveat with the observation and emphasize that while considering any application seeking pre-arrest bail, the High Court has to balance the two interests: i.e. that the power is not so used as to convert the jurisdiction into that under Section 438 of the Criminal Procedure Code, 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 further also that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. 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.

We have carefully perused the petition of complaint as well as the case diary. In the petition of complaint, the de facto complainant clearly stated that she and members of her community are abused by the petitioners on the issue of they being members of scheduled tribe community. The said fact was corroborated by the witnesses in their statement recorded under Section 161 of the Code of Criminal Procedure by the Investigating Officer.

In view of such circumstances, we find prima facie materials against the petitioners and we are of the opinion that Section 438

of the Code of Criminal Procedure is not maintainable in the instant case.

For the reasons recorded above, the prayer for anticipatory bail is **rejected**.

The application being **CRM 1720 of 2021** is accordingly **dismissed**.

However, this order shall not preclude the petitioners from taking necessary steps under the law as may be available to them.

(Harish Tandon, J.)

(Bibek Chaudhuri, J.)