

12.08.2021

Court No.28
Item No.24
(REJECTED)

ab

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT
JALPAIGURI**

(Via Video Conference)

CRM 785 of 2021

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed on 27.07.2021 in connection with Kurseong Police Station Case No. 103 of 2021 dated 15.06.2021 under Section 3(v)(x)(xiv) of the Schedule Caste & Schedule Tribe (Prevention of Atrocities) Act (G. R. Case No. 36 of 2021).

And

In the matter of : **Bikash Pradhan and another.**

...Petitioners

**Mr. Pradip Kumar Mitra,
Mr. Pinak Mitra,
Mr. Ranjit Singh.**

...For the Petitioners.

**Mr. Aditi Shankar Chakraborty, Ld. APP,
Mr. Ujjwal Luksom,
Mr. Aniruddha Biswas.**

...For the State.

The Advocate-on-record of the petitioners undertakes to affirm and stamp the petition/application as per the Rules within four weeks from date. Subject to such undertaking, the application is taken up for hearing.

Apprehending arrest in connection with Kurseong Police Station Case No. 103 of 2021 under Section 3(v)(x)(xiv) of the Schedule Caste & Schedule Tribe (Prevention of Atrocities) Act, the petitioners have filed the instant application for anticipatory bail under Section 438 of the Code of Criminal Procedure.

The instant anticipatory bail is filed by the petitioners on the premise that a case has been lodged by a lady claiming herself to be the married wife of the deceased and on denial by the family members of the petitioners to participate in funeral. It is submitted that a bar created under Section 18 and Section 18A of the Schedule Caste & Schedule Tribe (Prevention of Atrocities) Act is not applicable as the complainant has not been able to prove any element and/or ingredient

of the offences contemplated under the aforesaid Act and, therefore, the petitioners should be extended the benefit of the provisions contained under Section 438 of the Code of Criminal Procedure.

Our attention is drawn to the three-Judges Bench decision of the Supreme Court rendered in case of **Prathvi Raj Chauhan vs. Union of India and others**, reported in **(2020) 4 Supreme Court Cases 727** in support of the contention that the bar created under the aforesaid provision is not absolute and/or sacrosanct but depends upon the varied quality of materials unearthed during the course of investigation. We do not find any quarrel to the proposition that the bar under Section 18 and Section 18A of the said Act is not rigid but flexible in nature depending upon the nature of element and quality of statements by the complainant leading to a commission of offence under the aforesaid Act. The Apex Court in the above noted decision has succinctly laid down the aforesaid aspect, which is evident from the following observations:

“11. Concerning the applicability of provisions of Section 438 CrPC, it shall not apply to the cases under the 1989 Act. However, if the complaint does not make out a prima facie case for applicability of the provisions of the 1989 Act, the bar created by Sections 18 and 18-A(i) shall not apply. We have clarified this aspect while deciding the review petitions.

33. 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.”

In view of the law expounded by the Supreme Court in the above noted decision, we embark our exercise in perusing the materials relied upon by the State while opposing the prayer for anticipatory bail. After

perusal of the statement of the witnesses as well as the complainant, it cannot be said there is no prima facie existence of an ingredient attracting the provisions of the said Act.

The investigation is at the nebulous stage and the cooperation from the petitioners is necessary in a journey to the quest of truth. In view of the existence of a prima facie material, we do not find that it is a fit case where the petitioners should get immunity from custodial interrogation.

The application for anticipatory bail being CRM 785 of 2021 is, thus, ***rejected***.

(Harish Tandon, J.)

(Bibek Chaudhuri, J.)