

**25.04.2022**  
Serial no.24  
Aloke

**CRM (A) 1850 of 2022**

In re : An Application for Anticipatory Bail under Section 438 of the Code of Criminal Procedure in connection with Ghatal Police Station Case No. 214 of 2019 dated 19.07.2019 under Sections 447/323/506/509/307/354B/379/325/34 of the Indian Penal Code read with Sections 3(s)/3(w)(i)/3(w)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

-And-

In the matter of : **Sima Pan & Ors.**

... .. Petitioners

Mr. Soumyajit Das Mahapatra, Advocate

... .. For the Petitioners

Mr. Sudip Ghosh, Advocate

Mr. Bitasok Banerjee, Advocate

... ..For the State

Petitioners pray for anticipatory bail.

Learned advocate appearing for the petitioners submit that the petitioners were falsely implicated. There is a history of disputes between the family of the petitioners and the family of the de facto complainant. He refers to the previous police complaint filed at the behest of the family of the petitioners.

Learned Advocate appearing for the petitioners draws the attention to the complaint lodged by the de facto complainant. He submits that the incident occurred at a private place if one goes on the basis of the complaint itself. Therefore, one of the ingredients of the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is absent. Consequently, the bar under Section 18 of the Act of 1989 will not be attracted.

Learned Advocate appearing for the State draws the attention to the statement of the independent witnesses recorded under Section 164 of the Code of Criminal Procedure.

Learned Advocate appearing for the State draws the attention to the order dated April 6, 2022 passed by the

Revisional Court in CRM 2085 of 2019. He submits that since the Revisional Court refused to interfere with the police complaint case, this Hon'le Court should consider the same while considering the prayer for anticipatory bail made on behalf of the petitioners.

The revisional application was preferred challenging the proceedings which obviously includes the order passed by the learned Magistrate under Section 156(3) of the Code of Criminal Procedure. The Revisional Court, by the order dated April 6, 2022 did not return a finding that the ingredients for invocation of the provisions of the Act of 1989 are present. The Revisional Court noted that a prima facie case was made out and that the records reflect that the statement of the complainant was recorded under Section 164 of the Code of Criminal Procedure. The finding of the Revisional Court that a prima facie case was made out, as recorded in the order dated April 6, 2022, is to be understood in the context of the application under Section 156(3) of the Code of Criminal Procedure and the order passed therein. The allegations against the petitioners herein is not limited to the provisions of the Act of 1989 alone, the provisions of the Indian Penal Code are also involved.

The learned Magistrate while exercising powers under Section 156(3) of the Code of Criminal Procedure direct the police to register the complaint as a first information report. The first Information Report is subject to investigations. The police complaint registered as a first information report is subject to investigation. The direction of recording a complaint as a first information report cannot be considered to be as formation of opinion either by the learned Magistrate or by the Revisional Court as to the merits of the claim made in the police complaint. It may so happen that on considerations of the investigations all allegations made be found to be without substance.

In the police complaint lodged at the behest of the de facto complainant it appears that the incident occurred on a private land. The ingredients of the provisions of the Act of

1989 that the incident should occur at a public place is absent on the strength of the complaint itself. Consequently, we are of the view that the provisions of Section 18 of the Act of 1989 are not attracted.

Considering the gravity of the offence and the involvement of the petitioners therein as appearing from the materials in the case diary, we are inclined to grant anticipatory bail to the petitioners.

Accordingly, we direct that in the event of arrest the petitioners shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand Only) each, with two sureties of like amount each, to the satisfaction of the arresting officer and also be subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973 and on condition that the petitioner nos. 2, 3 and 4 will report before the Investigating Officer once in a fortnight till the conclusion of the investigation and petitioner nos. 1 and 5 will cooperate with the investigation and on condition that the petitioners shall appear every day before the jurisdictional Court on and from the date fixed for appearance of the accused and in default the jurisdictional Court will pass appropriate order to secure the presence of the petitioners in Court including cancelling the anticipatory bail granted without further reference to this Court.

The prayer for anticipatory bail of the petitioners is allowed.

CRM (A) 1850 of 2022 is disposed of.

**(Debangsu Basak, J.)**

**(Bibhas Ranjan De, J.)**