

28.04.2022

Sl. 36

Court No.29

suvayan

(Rejected)

CRM (A) 1958 of 2022

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with **Gaighata** P.S. Case No. **1075 of 2021** dated **18/11/2021** under Sections **498A/294/323/328/406/506/120B** of the Indian Penal Code and Section **3** of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

And

In the matter of: Shyama Pada Ghosh & Anr.

....petitioners.

Mr. Imtiaz Ahmed

Mr. G. Firdaus

Ms. Smita Saha

Sk. Saidullah

Mr. Supriyo Majumdar

... for the petitioners.

Mr. Saibal Bapuli

Mr. Soumik Ganguli

...for the State.

Petitioners seek anticipatory bail.

Learned Advocate appearing for the petitioners that the complaint was lodged with an unexplained delay. The petitioners were falsely implicated. The petitioners are neighbors. They are appears to be matrimonial disputes in which the petitioners were wrongly implicated.

Learned Advocate appearing for the petitioners relies upon a judgment and order dated February 26, 2019 passed in CRM 10429 of 2018 (*Kingshuk Gupta vs. State of West Bengal*) of the co-ordinate Bench. He submits that the bar under Section 18 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 does not preclude the Court from examining the allegations in the First Information Report on its face value and determining whether a prima facie case was made out or not. According to him, in the facts of the present case, the petitioners

cannot be proceeded against under the provisions of the Act of 1989.

Learned Advocate appearing for the State draws the attention of the Court to the materials in the case diary including the statement of witnesses recorded under Section 161 of the Criminal Procedure Code.

There is a police complaint as against the petitioners. The petitioners are named. In the police complaint, amongst others, the de facto complainant states that the petitioners used derogatory language with regard to the caste of her daughter at public places including on the public road and a market place.

Kingshuk Gupta (Supra) notes that Section 18 of the Act of 1989 does not preclude the Court from examining the allegations in the First Information Report on its face value and determining whether the prima facie case made out or not.

In the facts of the present case, the police complaint is detailed. It narrates the involvement of the petitioners in the incident. It also claims that the petitioners used derogatory language with regard to the caste of the daughter of the de facto complainant and uttered such words at public places.

In such circumstances, we cannot return a finding on the basis of the police complaint that the prima facie case was not made out as against the petitioners.

Consequently, the bar under Section 18 of the Act of 1989 applies in the fact of the present case.

Consequently, we are unable to grant anticipatory bail to the petitioners.

The application for anticipatory bail, being CRM (A) 1958

of 2022, is rejected.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)

