

10.05.2022
Serial no. 37
[Dd]
(Anticipatory Bail
Allowed)

CRM (A) 2123 of 2022

In re : An Application for **Anticipatory Bail** under Section **438** of the Code of Criminal Procedure in connection with **AJC Bose B Garden** Police Station Case No. **48** of **2022** dated **30.03.2022** under Sections **448/506** of the Indian Penal Code read with Section **3** of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act).

-And-

In the matter of : **Kingsuk Chatterjee & Anr.**

... .. Petitioners

Mr. Rajdeep Mazumder,
Mr. Pritam Roy,
Ms. Shyanti Poddar,
Mr. Abhijit Singh, Advocates
... .. *For the Petitioners*

Mr. S. S. Imam,
Mr. R. Jana, Advocates
... ..*For the State*

Petitioners pray anticipatory bail.

Learned advocate appearing for the petitioners submits that the petitioners are office bearers of a club. The de facto complainant also an officer bearer. He was removed as an office bearer in 2020. The mother of the de facto complaint lodged a police complaint in 2020 with regard to the incident. Thereafter, the present police complaint was lodged by the petitioners in respect of the selfsame incident adding the provisions of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Learned advocate appearing for the petitioners relies on **(2020) 4 SCC 727 [Prathvi Raj Chauhan vs. UOI & Ors.]** and contends that, allegations are false. No *prima facie* case exists against the petitioners.

Learned advocate appearing for the State draws the attention of the Court to the materials in the case diary. He refers to the statement of the de facto complainant and his wife recorded under Section 161 of the Criminal Procedure Code.

The allegation in the present police complaint is that the petitioners allegedly used offensive words in respect of the caste of the de facto complainant. Two incidents are spoken of – one of the incident is on the club premises and the other incident is at the bedroom of the de facto complainant.

Neither of the two allegations which the de facto complaint speaks of are at public places within the meaning of Act of 1989. It is, therefore, doubtful any offence committed under the provisions of Act of 1989 on the strength of the allegations made in the police complaint. **Prathvi Raj Chauhan (supra)** recognizes the power to grant anticipatory bail in a police complaint involving the Act of 1989 despite provisions of Section 18 of such Act. One of ground for grant is that, the Court must be satisfied that no *prima facie* material exists warranting arrest in such police complaint.

In the facts of the present case, it is doubtful as to whether the provisions of Act of 1989 are attracted on the basis of the police complaint lodged by the de facto complainant.

Consequently, we are of the view that the bar under Section 18 of the Act of 1989 is not attracted in the facts and circumstances of the present case. Considering the fact that police filed charge sheet, 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 further 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.

Prayer for anticipatory bail of the petitioners is **allowed.**

CRM (A) 2123 of 2022 is **disposed of.**

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)