

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

Present :

The Hon'ble Justice Bibek Chaudhuri

CRR 2988 of 2022

Smt. Bhabani Das & Ors.

Vs.

State of West Bengal & Anr.

**For the petitioners : Mr. Debasis Kar, Adv.,
Mr. Subhajit Chowdhury, Adv.,
Mr. Arka Bhadra, Adv.**

**For the State : Mr. S. G. Mukherjee Ld. P.P.,
Ms. Faria Hossain, Adv.**

Judgement on : 26.08.2022.

Bibek Chaudhuri, J.

The petitioners being the accused persons of GR Case No. 7405/2022 arising out of Titagarh Polices Station Case No. 492/2022 under Sections 341/342/323/354/506/509/34 of the Indian Penal Code with adding Section 3 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act have filed the instant revision assailing the order dated 6th August, 2022 passed by the Learned Additional Chief Judicial Magistrate at Barrackpore.

At the outset, I have perused the order dated 6th August, 2022. The Investigating Officer submitted a prayer before the Learned Additional Chief Judicial Magistrate at Barrackpore for adding Section 3 of the SC and ST (POA) Act in connection with

G. R. Case No. 7405/2022. The said prayer made by the Investigating Officer was allowed by the Learned Magistrate and the accused persons/petitioners who were enlarged on interim bail were directed to appear before the Court of the Learned Special Judge under the SC and ST (POA) Act on 16th August, 2022.

It is submitted by Mr. Kar that initially when Titagarh Police Station Case No. 492/2022 was registered, it was not registered under any penal provision contained in Section 3 of the SC and ST (POA) Act. As the petitioners were initially booked for committing offences under the penal code and all the offences were bailable in nature they were granted interim bail by the Learned Magistrate. Subsequent to the order of bail, the Investigating Officer made the prayer which was allowed vide impugned order dated 6th August, 2022. It is submitted by Mr. Kar that the petitioners apprehend that they may be taken to custody in view of addition of Section 3 of the SC and ST (POA) Act. It is also submitted by him that after addition of the aforesaid penal provision the Investigating Officer is running after them with the threat of arrest. Lastly, it is submitted by Mr. Kar that SC and ST (POA) Act is only applicable when member of scheduled caste or scheduled tribe is castigated or abused in the name of his caste. The *de facto* complainant or her family members do not belong to scheduled caste. So Section 3 of the said Act is not applicable.

Learned Public Prosecutor-in-Charge frankly submits that the ratio and guideline of the decision of the Hon'ble Supreme Court in ***Pradip Ram -Vs.- State of Jharkhand & Anr.***

Reported in **2019 Cr.L.J. 3801 (SC)** will be applicable in the case in hand before the Trial Court. However, personal appearance of the accused persons cannot be waived on the ground of apprehension that they may be arrested.

Having heard the Learned Counsels for the parties and on perusal of the entire materials-on-record, this Court finds that indisputably the petitioners were initially on bail. After the bail was granted penal provision under SC and ST (POA) Act was attracted. In **Pradip Ram** (Supra) the Hon'ble Supreme Court clearly held that where the accused is already on bail, on addition of offence or offences of any stringent penal provision, he/she cannot be arrested. For arresting the accused, order to arrest accused need to be taken from the Court which had granted bail. In other words, it is held by the Hon'ble Supreme Court that an order of bail cannot be treated to be *non-est* on addition of a stringent penal provision making the case triable by special Court.

In view of such circumstances and the accepted legal principle, the instant criminal revision is disposed of directing the petitioners to surrender before the Special Court within 9th September, 2022 where G.R. Case No. 7405/2022 is at present pending.

The Learned Trial Judge shall act on the basis of the principle laid down in **Pradip Ram** while adjudicating an application filed by the petitioners for bail before the said Special Court.

The instant criminal revision is, thus, **disposed of**.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item No. 04.