

C.R.M. (A) 5280 of 2022

21.11.2022
Sl.6
Court No.29
(AD)
(Rejected)

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with **Keshpur** Police Station Case No.**265 of 2022** dated **21/10/2022** under Sections **447/506/509/341** of the Indian Penal Code read with Section **3(1)(r)(s)** of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

And

In the matter of: **Nemai Chandra Kar @ Nimai Chandra Kar & Ors.**

....petitioners.

Mr. Dhananjay Banerjee
Mr. Pratip Mukherjee
Mr. Omar Faruk Gazi

... for the petitioners.

Mr. Saibal Bapuli, Ld. APP
Mr. Soumik Ganguly

... for the State.

Petitioners pray for anticipatory bail.

Learned Advocate appearing for the petitioners submits that the petitioners were falsely implicated. There is a previous criminal case pending against a family member of one of the petitioners. He relies upon *(2020) 10 Supreme Court Cases 710 (Hitesh Verma vs. State of Uttarakhand & Anr.)* and submits that the incident is alleged to be occurring on the courtyard of a private place and that too no members of the public were present. Therefore, the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 do not stand attracted in the facts of the present case. Moreover, some of the petitioners are tender in age and, therefore, considering their age, the Court should enlarge all the petitioners on anticipatory bail.

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

The police complaint as well as the statements recorded under Section 161 of the Code of Criminal Procedure implicates all the petitioners in utterance of words which are derogatory to the de facto complainant in relation to her caste.

The incident is alleged to take place in a courtyard of a private place.

The issue is whether the place of occurrence can be said to be a place within public view or not.

Hitesh Verma (supra) is of the following view:

14. *Another key ingredient of the provision is insult or intimidation in “any place within public view”. What is to be regarded as “place in public view” had come up for consideration before this Court in the judgment reported as Swaran Singh v. State. The Court had drawn distinction between the expression “public place” and “in any place within public view”. It was held that if an offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view (sic). The Court held as under: (SCC pp.443-44, para 28)*

“28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 (by calling him a “chamar”) when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression “place within public view” with the expression “public place”. A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies.”(emphasis

in original)

15. *As per the FIR, the allegations of abusing the informant were within the four walls of her building. It is not the case of the informant that there was any member of the public (not merely relatives or friends) at the time of the incident in the house. Therefore, the basic ingredient that the words were uttered “in any place within public view” is not made out. In the list of witnesses appended to the charge-sheet, certain witnesses are named but it could not be said that those were the persons present within the four walls of the building. The offence is alleged to have taken place within the four walls of the building. Therefore, in view of the judgment of this Court in Swaran Singh, it cannot be said to be a place within public view as none was said to be present within the four walls of the building as per the FIR and/or charge-sheet.*

16. *There is a dispute about the possession of the land which is the subject-matter of civil dispute between the parties as per Respondent 2 herself. Due to dispute, the appellant and others were not permitting Respondent 2 to cultivate the land for the last six months. Since the matter is regarding possession of property pending before the civil court, any dispute arising on account of possession of the said property would not disclose an offence under the Act unless the victim is abused, intimidated or harassed only for the reason that she belongs to Scheduled Caste or Scheduled Tribe.”*

We are not in a position to return a conclusive finding on the basis of the materials-on-record that the courtyard which is said to be the place of occurrence is not a place within public view.

In such circumstances, we are not in a position to observe that the provisions of the Act of 1989 are not attracted in this case.

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

Accordingly, the prayer for anticipatory bail of the petitioner is rejected.

C.R.M. (A) 5280 of 2022 is dismissed.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)

