

15.09.2022

Item No. 1
Ct.No.1
P.D/P.A

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Criminal Miscellaneous Jurisdiction

CRM (A) 490 of 2022

In Re: An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed on 06-9-2022 in connection with Matigara Police Station Case No. 764 of 2022 dated 07-07-2022 under Section 341/325/506 of the Indian Penal Code and read with Section 3 (1) (R) (S) of the Schedule Castes and Schedule Tribes Prevention of Atrocities Act.

In the matter of: **Ravindra Kumar Jain**

....Petitioner.

Mr. Souvik Mitter
Mr. Rajdeep Mazumder
Mr. Avrojoyti Das
Mr. Amit Saha
Ms. S. Agarwal

...For the Petitioner.

Mr. Abhijit Sarkar
Ms. Namrata Das

...For the State.

Mr. Sandipon Ganguly
Mr. Subham Ghosh
Mr. Surya Prasad Chatterjee
Mr. Mayank Roy

...For the de facto complainant

This is an application grant of anticipatory bail in connection with Matigara Police Station Case No. 764 of 2022 dt. 07.07.2022, under Section 341/325/506 of the Indian Penal Code read with section 3(1)(r)(s) of the Schedule Castes and Schedule Tribe Prevention of Atrocities Act, 1989, corresponding to G.R. Case No. 21 of 2022 pending before the Ld. Additional District and Sessions Judge, 1st Court at Darjeeling.

Mr. Sandipon Ganguly, Ld. Advocate appearing on behalf of the Victim/De-facto Complainant has raised a preliminary issue with regard to the maintainability of the instant application for grant of anticipatory bail on the ground that as per Section 18 of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989, Section 438 of the Code of Criminal Procedure, 1973 shall not apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989.

Mr. Ganguly submits that in the complaint, the complainant has specifically mentioned that the petitioner has assaulted her husband and when the de facto complainant tried to save her husband, the petitioner had also pushed her and abused her by taking the name of caste as Schedule Tribe.

Mr. Ganguly further submits that from the complaint itself a prima facie case under the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 is made out and thus the application filed by the petitioner is not maintainable.

Mr. Ganguly relied upon the judgment reported in (2012) 8 SCC 795 (Vilas Pandurang Pawar and Another – versus- State of Maharashtra and Ors) and the judgment reported in (2020) 4 SCC 727 (Prathvi Raj Chouhan – vs- The Union of India & Ors.) and submits that a specific allegation in the complaint against the petitioner is made which attract the provisions of section 3(1)(r)(s) of SC&ST (Prevention of Atrocities) Act, 1989 is made

out and thus the application filed by the petitioner is liable to be rejected.

Mr. Souvik Mitter, Ld. Advocate representing the petitioner submits that the application filed by the petitioner for grant of anticipatory bail is maintainable in the present case as there is no prima facie case is made out in the complaint for the offence 3(1)(r)(s) of the SC&ST (Prevention of Corruption Act, 1989) against the petitioner.

Mr. Mitter submits that the petitioner has also filed an application before the Hon'ble Single Judge under section 482 of the Code of Criminal Procedure, 1973 for quashing of the investigation of the above case being CRR No. 160 of 2022 and when the petitioner had moved the said application, the Learned Single Judge had also granted interim protection to the petitioner by preventing the investigating authority from taking any coercive steps against the petitioner for six weeks.

Mr. Mitter submits that only to harass the petitioner and to make the alleged offence non-bailable, the provisions of SC&ST acts have been invoked though there is no prima facie case is made out for the said offence. Mr. Mitter further submits that there is a rivalry between the petitioner and the de facto complainant and due to the same the instant case has been initiated against the petitioner.

Mr. Abhijit Sarkar, Ld. Advocate representing the state submits that from the complaint itself a case is made out for the

offence under section 3(1)(r)(s) of the SC&ST Act, 1989 and accordingly the police has invoked the said provision.

Mr. Sarkar further submits that during the investigation statement of the victim, de facto complainant and some witnesses were recorded and as per the said statements case under section 3(1)(r)(s) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 is made out against the petitioner.

Heard, the Ld. Counsel for the respective parties, considered the case diary and the materials available on record. The case initiated against the petitioner is under the provisions of Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989.

Section 18 reads as follows :

“18. Section 438 of the Code of not to apply to persons committing an offence under the Act.- Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.

[18A. No enquiry or approval required. – (1) For the purposes of this Act,-

(a) Preliminary enquiry shall not be required for registration of a First Information Report against any person; or

(b) The investigating officer shall not require approval for the arrest, if necessary, of any person, against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply.

(2) The provisions of section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court.]”

Section 3(1) (r) (s) reads as follows :

“3. Punishments for offences atrocities. –
[(1) Whoever, not being a member of a Schedule Caste or a Scheduled Tribe,-
(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;
(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view.”

On perusal of the complaint, it reveals that the only allegation that the petitioner had suddenly attacked the husband of the de facto complainant and when the de facto complainant tried to save her husband, the petitioner had pushed her back and abused her by saying Schedule Tribe within public view.

The basic ingredients of the offence under Section 3 (1) (r) of the Act of 1989 can be classified as *“(1) intentionally insults or intimidates with intent to humiliate a member of a Schedule Caste and Schedule Tribe and (2) in any place within publicly.”*

In the present case, on plain reading of the complaint on the basis of which the FIR has been initiated prima facie this Court finds that there is no intention to insult or humiliate the victim. In the complaint, it is alleged that the petitioner had suddenly assaulted the husband of the de facto complainant.

In view of the above, this Court is of the view that till this stage there is no material available in case diary for the alleged offence and thus the petitioner is entitled to get an anticipatory bail as prayed for. In the event of arrest, the petitioner may fine bail of Rs. 10,000/- with one surety with the satisfaction of the

arresting officer. The petitioner shall comply with the conditions as laid down under Section 438 (2) of Code of Criminal Procedure subject to further condition that the petitioner shall meet the Investigating Officer once in a week until further order.

CRM (A) 490 of 2022 is thus **allowed**.

All concerned parties shall act in terms of the copy of the order downloaded from the official website of this Court.

(Krishna Rao, J.)

(Subrata Talukdar, J.)