

Crl.O.P.No.25432 of 2022

T.V.THAMILSELVI, J.

The petitioner, who apprehends arrest for the alleged offence under Sections 153(A) (1)(a), 505(1)(c), 505(2) of IPC and 3(1)(r), 3(1) (u) of SC/ST (Prevention of Atrocities) Amendment Act, 2015 in Cr.No.237 of 2022 on the file of the respondent police, seeks anticipatory bail.

2.Notice issued to the defacto complainant/third respondent. However, the same has been returned with an endorsement as "unserved".

3.The case of the prosecution is that the petitioner, who is the Head of the Department of Tamil Literature in Pachaiyappa's College had alleged to have conversed with a student by pointing out some of the students, enquired about their caste name. The allegation is that the conversation of the petitioner with the students promoted the students to develop enmity between them on the basis of caste and thereby, the petitioner instigated the community clash amount the students. Therefore, the defacto complainant, who is the State Deputy Secretary in Progressive Student Association requested the second respondent to initiate departmental action and criminal



action under SC/ST Act against the petitioner. Hence, the case.

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4.The learned counsel appearing for the petitioner would submit that the petitioner has completed her 33 years of service as Head of the Department of Tamil Literature in Pachaiyappa's College. He would submit that there is an Assistant Professor one Muthusamy of the same Department had some grudge against the petitioner with regard to promotion. When the petitioner advised the students to attend the classes regularly, the said Muthusamy discouraged the same which promoted enmity between them, which projected as if the petitioner had promoted enmity among the students on the basis of caste. Thereby, a false and frivolous complaint has been made against the petitioner, without any prima facie material. Hence, he prays to grant anticipatory bail to the petitioner.

5. Notice issued to the third respondent/defacto complainant.

6.The learned Government Advocate (Crl.Side) appearing for the respondents would submit that when the petitioner enquired about her students' caste, some of the students got aggrieved who belong to Scheduled



Community and their conversation was published in Thanthi Television.

Based on which, a complaint has been lodged against the petitioner, as they got sufficient materials, they also registered the F.I.R under Sections 153(A) (1)(a), 505(1)(c), 505(2) of IPC and 3(1)(r), 3(1) (u) of SC/ST (Prevention of Atrocities) Amendment Act, 2015. He would also submit that anticipatory bail is not applicable to Special Act. To that effect, he relied upon the ratio laid down in judgment of the Supreme Court in **(1995) 3 SCC 21 (State of M.P. and Ors. Vs. Ram Krishna Balothia)**.

7. By way of reply, the learned counsel for the petitioner relied upon the ratio laid down in **(2018) 6 SCC 454 (Dr.Subhash Kashinath Mahajan Vs. State of Maharashtra and another)**. The Hon'ble supreme Court held that there is no absolute bar against grant of anticipatory bail in cases if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide. Further, the petitioner counsel also relied upon the proportion laid down by this Court in Crl.O.P(MD).No.17224 of 2019, wherein this Court held that the anticipatory application is maintainable even if the case has been registered under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act, 1989), if at



all it is prima facie established that the said complaint was lodged by abusing the process of law. Thus, the extraordinary power of this Court to entertain a plea of anticipatory bail and this power was held to be available in ***Hema Mishra Vs.State of U.P. and ors, (2014) 4 SCC 453.***

8. On contrary, the learned Government Advocate (Crl.Side) plays reliance on the judgment of the Supreme Court in ***Prathvi Raj Chauhan Vs. Union of India and Others (2020) 4 SCC 727.*** In this regard, it is relevant to extract Paragraph 32 and 33 of the judgment, as follows:

"32. As far as the provision of Section 18-A and anticipatory bail is concerned, the judgment of Mishra, J. has stated that in cases where no prima facie materials exist warranting arrest in a complaint, the Court has the inherent power to direct a pre-arrest bail.

33. I would only add a caveat with the observation and emphasise that while considering any application seeking pre-arrest bail, the High Court has to balance the two interests: i.e. that the power is not so used as to convert the jurisdiction into that under Section 438 of the Criminal Procedure Code, but that it is used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR and



further also that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. I consider such stringent terms, otherwise contrary to the philosophy of bail, absolutely essential, because a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament."

9. In view of the above, learned Prosecutor argues that if at all no prima facie is made out and in exceptional case alone this Court is empowered. As per the preliminary enquiry conducted by the investigating agency, it reveals that prima facie material exists and hence F.I.R has been lodged under Sections 153(A) (1)(a), 505(1)(c), 505(2) of IPC and 3(1)(r), 3(1) (u) of SC/ST (Prevention of Atrocities) Amendment Act, 2015, hence, he raised objections to grant anticipatory bail to the petitioner.

10. Foremost requirement is that the petitioner bound to establish that there is no prima facie material available against the petitioner/accused. The burdens on the petitioner to show that the allegations are prima facie motivated and false. For that, the learned counsel for the petitioner would submit that on the face of the F.I.R itself it clearly indicates that to attract



Section 3(1)(r) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the alleged insult should be made in the public place.

But as per the F.I.R allegation, the conversation between the petitioner and the student held in the class room and not in the presence of the public. On that ground, he raised objection, as such F.I.R is not maintainable. Furthermore, he also pointed out that as a class teacher, she enquired the students without any intention to insult them. However, she has been falsely implicated in this case due to the instigation of one of her co-worker one Muthusamy and there is no prima facie material made out in the case.

11. Considering the submissions advanced on either side, the fact reveals that the petitioner is the Head of the Department of Tamil Literature in Pachaiyappa's College and she has completed her 33 years of service without any bad back records. According to the prosecution, while the petitioner had a conversation with some of the students in her class, the same was telecast in one of the upcoming television. Though the defacto complainant had lodged the complaint against the petitioner, he is neither parent of any of the students nor belongs to the college. Admittedly, he is the third party and he was not present in the place of occurrence, even



assuming it as true.

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12. As per the direction, CD file produced before this Court is perused, wherein the statement given by some of the students reveals that one Muthusamy was supporting some of the students who had played a main role in telecasting the said telephonic conversation with the petitioner. It is seen that the alleged conversation is motivated with an intention to grab the teacher/petitioner to indulge in such conversation with regard to questioning about caste of the students. Therefore, it may be inferred from the facts that one of the co-worker of the petitioner one Muthusamy is the man behind this complaint and there is lot of probability that at his instigation the students were instigated to record the conversation of the petitioner. Therefore, it is found that the said Muthusamy for his personal vengeance instigated the students and also the defacto complainant, who said to be viewed the said telecast, gave a complaint without having any knowledge about the fact.

13. In many cases, this Court observed that if any one of the co-worker wants to harass the other co-worker in the working place, they used



to lodge a complaint by invoking this Special Act. Now, the case in hand is one such case, where the Head of the Department of Tamil Literature/petitioner has completed her 33 years of service found implicated as if she had harassed the students. Moreover, as rightly pointed out by the learned counsel for the petitioner to attract Section 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the conversation must be in the public but as per the students' version, the alleged conversation took place in the class room and also through phone. Therefore, all these facts clearly denotes that the complaint has been lodged with mala fide intention for the reasons as discussed above. Hence, it is clear case of abuse of process of law. In such circumstances, it is relevant to extract the conclusion set out in the judgement of the Supreme Court in (2018) 6 SCC 454 (Dr.Subhash Kashinath Mahajan Vs. State of Maharashtra and another) which read as under:

"79.1. Proceedings in the present case are clear abuse of process of Court and are quashed.

79.2. There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where no judicial scrutiny, the complaint is found to be prima facie mala fide. We approve the view taken an approach of the



Gujarat High Court in Pankaj D.Suthar and N.T.Desai and clarify the Judgements of this Court in Balothia and Manju Devi.

79.3.In view of the acknowledged abused of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority an of a non-public servant after approval by the SSP which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons much be scrutinize by the Magistrate for permitting further detention."

14. Thereby, it is a clear case of abuse of process of law and this Court found that no prima facie made out by the respondent police at this stage. Hence, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

15. Accordingly, the petitioner is ordered to be released on anticipatory bail in the event of arrest or on his appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned **Principal Sessions Judge, Chennai** on condition that the petitioner shall execute a bond for a sum of **Rs.10,000/- (Rupees Ten Thousand**



Only) with two sureties each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that:

(a)the petitioner and the sureties shall affix their photographs and left thumb impression in the surety bond and the Court concerned may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(b)the petitioner shall report before the respondent police as and when required for interrogation;

(c)the petitioner shall not tamper with evidence or witness either during investigation or trial;

(d)the petitioner shall not abscond either during investigation or trial;

(e)on breach of any of the aforesaid conditions, the learned Magistrate/ Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on anticipatory bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in *P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560]*; and;

(f)if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

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