

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No. 1448 OF 2022

ORDER:

This Criminal Petition under Section 438 Cr.P.C. is filed by the petitioners – Accused Nos. 1 to 3 seeking bail in the event of their arrest in connection with Crime No. 17 of 2022 on the file of Chinnambavi Police Station registered for the offences punishable under Sections 324 read with Section 34 IPC. and Section 3(1)(R)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. The case of the prosecution is that on 04.02.2022 at about 08.00 hours, when the de facto complainant along with Tagaram Gopal were going through their village Bodrai, the petitioners came in their opposite direction, then, the de facto complainant asked Accused No.1 as to why he had put up whats App message in the group regarding the land in Survey No. 427/AA, in an extent of Acs.2.10 guntas, Accused No.1 replied touching his caste name. Meanwhile, Accused Nos. 2 and 3 came there and abused the de facto complainant in his caste name and beat him and Tagaram Gopal with hands and legs. Accused No.3 beat the de facto complainant with a stone on his chest and caused bleeding injury.

3. Learned counsel for the petitioners Sri Aishwarya Thakur submits that the petitioners are arrayed as Accused Nos. 1 to 3. It is submitted that basing on the very same incident occurred on 04.02.2022, the present complaint was

lodged and also the petitioners have lodged another complaint registered as Crime No. 18 of 2022 for the offences under Sections 323, 384, 504 and 506 read with Section 34 IPC. Learned counsel submits that even as per the allegations in the complaint, there are disputes with regard to a piece of land between the de facto complainant and the petitioners and they have been implicated in this case. It is submitted that as contemplated under Section 15(3) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, they have taken out the notice to the de facto complainant and she also filed a memo evidencing the service of notice. She submits that even as per the complaint, a stray sentence is stated that petitioners have abused the de facto complainant in the name of caste but it is not stated whether it is in the public eye. He further submits that as per the judgment of the Hon'ble Apex Court in ***Pruthvi Raj Chauhan v. Union of India*¹**, when the abuse is not in the public eye, the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are not attracted. Further, learned counsel submits that in fact the de facto complainant abused the sister-in-law of petitioner No.3, as such, he has given a complaint and in that process an altercation took place. She submits that the injuries that are sustained by the de facto complainant are simple in nature and no preliminary enquiry is conducted in this case, hence, the

¹ (2020) 4 SCC 727

case of the petitioners may be considered for grant of pre-arrest bail.

4. On the other hand, learned Assistant Public Prosecutor submits that so far six witnesses were examined and investigation is still pending. It is submitted that as per the allegations in the complaint, the offence under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are attracted as such, the petitioners are not entitled for grant of pre-arrest bail in view of the bar under Section 18 of the Act.

5. In this case, apart from the Indian Penal Code, the offences under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are also alleged. As rightly pointed out by the learned Assistant Public Prosecutor, in view of the bar under Section 18 of the Act, the accused are not entitled for anticipatory bail.

6. The Hon'ble Apex Court in ***Pruthviraj Chauhan's*** case (supra) observed that

“ concerning the applicability of provisions of Section 438 Cr.P.C. shall not apply to the Act. However, if the complainant does not make out a prima facie case for applicability of the provisions of the Act, the bar created by Section 18 and 18(A)(i) shall not apply.”

“ It would only add a caveat with the observation and emphasize that while considering any application seeking pre-arrest bail, High Court has to balance two interests i.e. the power is not so used to convert the jurisdiction under Section 438 of Cr.P.C., 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 if such orders are not made in similar cases, the result would

inevitably be a miscarriage of justice or abuse of process of law. Therefore, 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.”

7. Taking into consideration the fact that basing on the same incident, two cases were registered and as nowhere it is stated whether abuse touching the caste name was in the public eye and also in view of the precedent set out in ***Pruthviraj Chauhan’s case***, this Court deems it appropriate to grant pre-arrest bail to the petitioners.

8. Accordingly, this Criminal Petition is allowed. Petitioners – Accused Nos. 1 to 3 shall surrender before the Station House Officer, Chinnambavi Police Station in connection with Crime No. 17 of 2022 within one week from today and on such surrender and on each of them executing a personal bond for Rs.20,000/- (Rupees twenty thousand only) with two sureties for a like sum each to the satisfaction of the said Station House Officer, they shall be released on bail. It is made clear that no further extension of time will be granted.

LALITHA KANNEGANTI, J

02nd March 2022

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