

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI**CRIMINAL PETITION No. 1672 of 2022****O R D E R:**

This Criminal Petition under Section 438 Cr.P.C. is filed by the petitioners – Accused Nos. 1 and 2 in Crime No.10 of 2022 on the file of Nagireddipet Police Station, Kamareddy District, registered for the offences punishable under Sections 417, 504, 506 r/w 34 IPC, under Sections 3(1)(r) (s), 3(2)(v)(a) of SCs and STs (POA) Act, seeking anticipatory bail.

2. Prosecution case is that the de-facto complainant has lodged a complaint stating that A1, who belongs to Tandoor Village, has cheated his mother, by name Mariyamma, since 40 years ago and on the pretext of marriage, he had illicit relationship with her, due to which, he was born as first son of his mother and A1 in the year 1991. It is stated since his childhood till 2017, the de-facto complainant was working in the agricultural land and the rice mill of A1 and when he asked to give some land, A1 postponed the same. On 05.01.2022, when his father-A1 and his younger son-A2 came to Tandoor village and when they were returning to Hyderabad, the de-facto complainant stopped their car and asked his share in his land, then A1 and A2 abused him in filthy language in the name of his caste.

3. The learned counsel for petitioners/A1 and A2 Mr. C. Sharan Reddy, submits that the case of the complainant is that the 1st petitioner/A1 was having illegal intimacy with the mother of the de-facto complainant and out of their relationship, he was born. He submits that the 1st petitioner had promised to transfer certain land in the name of the de-facto complainant and on 05-01-2022, when A1 and A2 were going to Hyderabad, he stopped the car, then they abused him in the name of his caste and at the intervention of other villagers, the petitioners left that place and he filed the present complaint. Learned counsel further submits that along with this petition, petitioners have filed the voter list where the de-facto complainant is shown as son of Rajaiah Naguluri. He submits that even as per the House tax assessment, the name of the father of de-facto complainant is shown as Rajaiah Naguluri. He submits that for the reasons best known, the petitioners have been falsely implicated in this case and only with a view to harass them, the present case is filed under provisions of SCs & STs alleging that they have abused in the name of caste. He submits that invoking the provisions of SCs and STs Act is a pure abuse of process of law and hence, the case of petitioners may be considered for grant of pre-arrest bail.

4. Learned counsel for the 1st respondent-de-facto complainant Mr. K. Ravinder Reddy, submits that there are

specific overt acts against the petitioners and in view of the bar under Section 18 of the SCs and STs (POA) Act, the petitioners are not entitled for pre-arrest bail.

5. On the other hand, learned Assistant Public Prosecutor submits that in view of the bar under Section 18 of the SCs and STs (POA) Act, the petitioners are not entitled for anticipatory bail. He submits that there are specific overt acts against the petitioners. He submits that the investigation is pending and so far 7 witnesses were examined and at this stage, petitioners are not entitled for grant of anticipatory bail.

6. As rightly pointed out by the learned Assistant Public Prosecutor that there is a bar under Section 18 of the SCs and STs (POA) Act for grant of pre-arrest bail. 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. In the present case, the case of the de-facto complainant is that as the 1st petitioner failed to transfer the land in his name, when he asked, then A1 and A2 abused him in the name of his caste and it is stated in the complaint that the 1st petitioner is his father, whereas as per the House tax assessment and Voter list, it appears that his father's name is Rajaiah Naguluri. *Prima facie*, it appears that the 1st petitioner is not the actual father of the de-facto complainant which is the basis for filing this complaint. Hence, this Court deems it appropriate to grant pre-arrest bail to the petitioners.

8. Accordingly, this Criminal Petition is allowed. Petitioners – Accused Nos. 1 and 2 shall surrender before the Station House Officer, Nagireddipet Police Station, Kamareddy District, in connection with Crime No. 10 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.

3rd March 2022

LALITHA KANNEGANTI, J

sj/gvl