

27.02.2023

Sl. No.122

**akd**

[dismissed not maintainable]

**IN THE HIGH COURT AT CALCUTTA**

**Circuit Bench at Jalpaiguri**

**C. R. M. (A) 413 of 2022**

In Re: An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed on 22.08.2022 in connection with Siliguri Police Station Case No.723 of 2022 dated 27.07.2022 under Sections 504/506/34 of the Indian Penal Code read with Section 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. (G.R. Case No.24 of 2022)

And

In Re: ***Amar Nath Sah @ Amarnath Sah & Anr.***

... .. Petitioners

Mr. Hillol Saha Podder

... .. for the petitioners

Mr. Niloy Chakraborty

Mr. Ujjwal Luksom

Ms. Namrata Das

... .. for the State

It is submitted on behalf of the petitioners that the allegations are out and out false. There is prior enmity between the parties. An earlier criminal case was registered against the petitioners. It is further submitted allegations are actuated mala fide and unfounded. Hence, the application for anticipatory bail is maintainable.

Learned Advocate for the State submits allegations in the FIR state that the petitioners had abused the de-facto complainant taking his caste name in the court premises.

We have considered the materials on record. Sections 18/18A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (*hereinafter referred to as 'Act of 1989'*) provides for a bar to entertain an application for pre-arrest bail with regard to

offences under the Act of 1989. Such bar does not preclude the court to examine whether the uncontroverted allegations in the FIR disclose ingredients of the offence. Mere reference to the offences under the Act of 1989 in the FIR would not take away the jurisdiction of the court.

We have examined the allegations in the FIR in the light of the limited enquiry as envisaged in law. Uncontroverted allegations show the petitioners had abused the de-facto complainant by taking his caste name. Whether the allegations are true or they are prompted through malice is a question of fact which enquiry this court is unable to undertake. Hence, the application is dismissed as not maintainable.

However, the petitioners are at liberty to appear before the trial court and pray for regular bail within seven days from date. In the event they do so, learned court shall consider their prayer for regular bail in the light of the attending circumstances particularly the prior criminal case pending between the parties and the fact that there is no chance of abscondence of the petitioners.

**(Subhendu Samanta, J.)**

**(Joymalya Bagchi, J.)**