

HON'BLE Dr.JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.2891 of 2023

ORDER:

1. Heard Sri T.P.Acharya, learned counsel for the petitioners as well as the learned Additional Public Prosecutor who is representing the Respondent-State.

2. Seeking pre-arrest bail, the present Criminal Petition is filed under Section 438 Cr.P.C. on behalf of the petitioners, who are arrayed as Accused Nos.2 & 3 in Crime No.97 of 2023 of Sanathnagar Police Station.

3. Despite of issuance of notice to the *de facto* complainant, none appeared.

4. The facts of the case in brief as could be perceived through the contents of the complaint are that the son of the petitioners i.e., Accused No.1, got associated with the *de facto* complainant five years back. He informed the *de facto* complainant that he fell in love with her. However, Accused No.1 did not accede to the proposal of marriage. Thereafter, Accused No.1 executed a bond agreeing to marry her. In the said bond, the petitioners, being the parents of Accused No.1, also signed. Subsequently, they

both participated in sexual intercourse number of times. The *de facto* complainant became pregnant. On that, she requested Accused No.1 to marry her. But, he refused. When the *de facto* complainant informed the matter to the petitioners, they refused to get the marriage performed on the ground that the *de facto* complainant belongs to a lower caste.

5. The petition is filed under Section 438 Cr.P.C. for grant of pre-arrest bail. However, there is a bar under Section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act with regard to the applicability of Section 438 Cr.P.C.

6. Section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act reads as under:-

“Section 438 of the Code 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.”

7. Further, Section 18A of the said Act which came into force with effect from 20.08.2018, reads as under:-

“18A. No enquiry or approval required:- (1) For the purpose 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.”

8. This application, as earlier indicated, is filed under Section 438 Cr.P.C.

9. Making his submission that the case facts does not attract the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, Section 438 Cr.P.C. can be applied and anticipatory bail may be granted, learned counsel for the petitioners relied upon two decisions of the Hon’ble Apex Court. The first decision is

the one that is rendered in the case between **RAHNA JALAL Vs. STATE OF KERALA AND ANOTHER**¹ wherein their Lordships, dealing with the provisions of Muslim Woman (Protection of Rights on Marriage) Act, 2019, incidentally touched the bail provisions that are enshrined under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and at Paras 21 to 25 of the judgment, held as follows:-

“21. The Scheduled Castes and [Scheduled Tribes \(Prevention of Atrocities\) Act](#) 1989 also contains similar provisions, which exclude the application of [Section 438](#) Cr.P.C. [Sections 18](#) and [18-A](#) provide as follows:

“18. [Section 438](#) of the Code 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.

18-A. 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

¹ (2021) 1 Supreme Court Cases 733

(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.”

22. *Section 18* explicitly excludes the application of *Section 438* Cr.P.C in relation to any case involving the arrest of any person on an accusation of having committed an offence under the Act. Sub-section (2) of *Section 18-A* specifically excludes the application of the provisions of *Section 438* Cr.P.C, notwithstanding any judgment, order or direction of a Court.

23. The provisions of *Section 18* and *18A* have been interpreted by a three Judge Bench of this Court in *Prathvi Raj Chauhan v. Union of India*² (“Chauhan”). Justice Arun Mishra speaking for himself and Justice Vineet Saran, while construing these provisions, observed that: (SCC p.751, para 11)

“11. Concerning the applicability of provisions of *Section 438* CrPC, it shall not apply to the cases under the 1989 Act. However, if the complaint does not make out a prima facie case for applicability of the provisions of the 1989 Act, the bar created

² (2020) 4 SCC 727

by [Sections 18](#) and [18-A\(i\)](#) shall not apply. We have clarified this aspect while deciding the review petitions.”

24. The same view has been taken in *Prathvi Raj Chauhan* (referred *supra*) in the concurring judgment of Justice S. Ravindra Bhat, in the following observations: (*Prathvi Raj Chauhan* case, SCC p.759, para 32)

“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.”

25. Thus, even in the context of legislation, such as the Scheduled Castes and [Scheduled Tribes \(Prevention of Atrocities\) Act](#) 1989, where a bar is interposed by the provisions of [Section 18](#) and Sub-section (2) of [Section 18-A](#) on the application of [Section 438](#) of the CrPC, this Court has held that the bar will not apply where the complaint does not make out “a *prima facie* case” for the applicability of the provisions of the Act. A statutory exclusion of the right to access remedies for bail is construed strictly, for a purpose. Excluding access to bail as a remedy, impinges upon human liberty. Hence, the decision in *Chauhan* (*supra*) held that the exclusion will not be attracted where the complaint does not *prima facie* indicate a case attracting the applicability of the provisions of the

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.”

10. The second decision is the one that is rendered in the case between **DR SUBHASH KASHINATH MAHAJAN Vs. STATE OF MAHARASHTRA AND ANOTHER**³ wherein the Court at Paras 44 & 45 of the order held as under:-

“Issue of anticipatory bail

44. In the light of the above, we first consider the question whether there is an absolute bar to the grant of anticipatory bail in which case the contention for revisiting the validity of the said provision may need consideration in the light of decisions of this Court relied upon by learned Amicus.

45. Section 18 of the Atrocities Act containing bar against grant of anticipatory bail is as follows:

“Section 438 of the Code 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.”

11. Also, at Para 47 of the order, the Court observed as under:-

³ (2018) 6 Supreme Court Cases 454

“47. Exclusion of anticipatory bail has been justified only to protect victims of perpetrators of crime. It cannot be read as being applicable to those who are falsely implicated for extraneous reasons and have not committed the offence on prima facie independent scrutiny. Access to justice being a fundamental right, grain has to be separated from the chaff, by an independent mechanism. Liberty of one citizen cannot be placed at the whim of another. Law has to protect the innocent and punish the guilty. Thus considered, exclusion has to be applied to genuine cases and not to false ones. This will help in achieving the object of the law.”

12. Thus, both the above decisions manifests that where the case facts does not indicate or express in clear terms the applicability of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, then the Courts would be well empowered to grant anticipatory bail and that Section 438 Cr.P.C. can be applied. In the case on hand, the entire incidents and transactions are between the *de facto* complainant and Accused No.1. No details with regard to the alleged abusation and the date, time and place at which such abusation is made are given. The grievance is only that Accused No.1 failed to marry the *de*

facto complainant and even though the petitioners, who are the parents of Accused No.1 were informed, they did not take steps to perform the marriage.

13. Thus, taking into consideration the nature of the case, this Court is of the view that the case facts does not attract the strict application of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act so far as the petitioners are concerned and thus, Section 438 Cr.P.C. can be invoked.

14. The submission of the learned Additional Public Prosecutor is that ten (10) witnesses were already examined and that the material part of investigation is completed.

15. Therefore, this Court is of the view that the request of the petitioners can be honoured, however, conditionally.

16. In the result, the Criminal Petition is allowed with the following conditions:

- (i) The petitioners/Accused Nos.2 & 3 are directed to surrender before the concerned Court within ten (10) days. On such surrender, they shall be

enlarged on bail on their executing a personal bond for Rs.40,000/- (Rupees Forty Thousand only) each with two sureties for like-sum each to the satisfaction of the Court concerned. The sureties are directed to submit their two latest passport size photographs at the time of furnishing solvency. One such photograph is ordered to be pasted in the Surety Register against the name of the surety. The other photograph shall be kept in the case record concerned.

- (ii) The petitioners/Accused Nos.2 & 3 shall report before the Station House Officer, Sanathnagar Police Station, on every Monday between 10.30 A.M. and 12:00 P.M. till filing of final report.
- (iii) The petitioners/Accused Nos.2 & 3 should not involve in any unlawful activity.
- (iv) The petitioners/Accused Nos.2 & 3 should afford all assistance for proper investigation of the case.
- (v) The petitioners/Accused Nos.2 & 3 should not cause the evidence of the offence disappear.
- (vi) The petitioners/Accused Nos.2 & 3 should not tamper with the evidence in any manner.

- (vii) The petitioners/Accused Nos.2 & 3 should not by way of inducement, threat or promise, dissuade any person who is acquainted with the facts of the case, from disclosing such facts to the Court or to the Police Officer.
- (viii) In case the petitioners/Accused Nos.2 & 3 hold passport, they shall surrender the same.
- (ix) The petitioners/Accused Nos.2 & 3 should ensure their presence whenever required by the Court or Police.
- (x) The petitioners/Accused Nos.2 & 3 shall not leave India without previous permission of the Court concerned.
- (xi) The petitioners/Accused Nos.2 & 3 shall file affidavits before the Court concerned disclosing the following particulars:-
 - (1) Contact number
 - (2) Mail address
 - (3) Residential particulars.

In case, there is any change of the aforementioned details, the petitioner shall intimate the court concerned by giving fresh affidavits duly mentioning the change. They shall continue to do so till filing of the final report.

Any deviation of the above conditions would entitle the respondent to take appropriate steps for cancellation of the pre-arrest bail granted.

Dr. JUSTICE CHILLAKUR SUMALATHA

Date:13.04.2023
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