

05.08.2024
Court No.29
Item No. ML-20

Allowed

sg

CRM (A) 2305 of 2024

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure read with Section 482 of the BNSS, in connection with Chopra Police Station Case No. 397 of 2023 dated 13.05.2023 under Sections 341/323/379/349/34 of the Indian Penal Code read with Sections 3(i)(x) of the SC&ST(POA) Act, pending before the learned Judge, Special Court & Additional Sessions Judge, 1st Court, Raiganj, Uttar Dinajpur.

And

In Re: **Ziarul Haque @ Jiarul Haque & Ors.**
Petitioners

Mr. Niladri Sekhar Ghosh
Mr. Shaharayar Alam
Ms. Sompurna Chatterjee
Mr. Sourov Mondal

For the Petitioner

Mr. Sandip Chakraborty

For the State

1. We have heard the learned Counsel for the parties. The learned Counsel for the petitioners submits that the petitioners belong to the community in which there is no caste and accordingly, the statement of the petitioner, alleged to have been made to another caste without proudly declaring his own caste, could not be treated to be an offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. It is submitted that the petitioners have humiliated the complainant by making allegation on her caste cannot be a factor to be considered in view of the decision of the Hon'ble Supreme Court in *Gorige Pentaiah vs. State of Andhra Pradesh* reported in *(2008) 12 SCC 531*. The learned Counsel has also relied upon the decision in *Hitesh Verma vs. State of Uttarakhand & Anr.* reported in *(2020) 10 SCC*

710 for the proposition that even if it is assumed that any statement has been made which is likely to cause humiliation or insult to the complainant on the basis of his caste if such statement is not made in public place, the provision of the aforesaid Act shall not apply.

2. The learned Counsel for the State, in opposing the prayer for anticipatory bail, has referred to the statement of the victim recorded under Section 164 of the Code of Criminal Procedure.
3. Considering the materials available in the case diary and even if it is assumed that the complainant was ridiculed or humiliated with regard to his caste which was made inside a car and not in a public view, we are of the view that petitioners are able to rebut presumption under Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Moreover, in the statement the complainant has not made any specific allegation against the present petitioners. The charge sheet has already filed. On such consideration, we are of the view that the custodial interrogation of the present petitioners is not necessary.
4. Accordingly, we direct that in the event of arrest the petitioner namely, **Ziarul Haque @ Jiarul Haque, Md Zahidur Rahaman @ Jahedul Rahaman, Enamul Haque @ Md Anabul, Ainul Haque @ Md. Ainul**, shall be released on bail upon furnishing a bond of Rs.10,000/- each, with two sureties of like amount each, one of whom must be local, to the satisfaction of learned Judge, Special Court & Additional Sessions Judge, 1st Court, Raiganj, Uttar Dinajpur, subject to conditions as laid down under Section 438(2) of the Code of Criminal Procedure corresponding to Section 482(2) of the Bharatiya Nagarik Suraksha Sanhita. The petitioners shall

appear before the trial court on each and every date of hearing until further orders.

5. In the event the petitioners fail to appear before the trial court without any justifiable cause, the trial court shall be at liberty to cancel their bail in accordance with law without any further reference to this Court.
6. Accordingly, the prayer for anticipatory bail of the petitioners is allowed.
7. CRM (A) 2305 of 2024 is, thus, disposed of.
8. All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Soumen Sen, J.)

(Uday Kumar, J.)