IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

WEDNESDAY, THE 31ST DAY OF JULY 2024 / 9TH SRAVANA, 1946

CRL.A NO. 1310 OF 2024

CRIME NO.423/2024 OF KILIMANOOR POLICE STATION, THIRUVANANTHAPURAM

AGAINST THE ORDER/JUDGMENT DATED 10.07.2024 IN CRMP NO.301 OF 2024

OF SPECIAL COURT-TRIAL OF OFFENCE UNDER SC/ST(POA)ACT,1989,

NEDUMANGAD

APPELLANT/PETITIONER/ACCUSED NO.6:

PRAVEEN.M.S,
AGED 42 YEARS,
S/O MOHANAN, RESIDING AT KANAVILA VEEDU, PUTHIYAKAVU,
KILIMANOOR P.O, THIRUVANANTHAPURAM DISTRICT,
PIN - 695601

BY ADVS.
J.R.PREM NAVAZ
SUMEEN S.
MUHAMMED SWADIQ
O.MOHAMED BASIL KOYA THANGAL
IRSHAD K.K.

RESPONDENTS/STATE & COUNTER PETITIONERS:

1 **STATE OF KERALA,**
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, PIN - 682031

2 **ANANDHU,**
AGED 23 YEARS, S/O RAJU, RESIDING AT KUNNUVILA VEEDU,
KEEZHMANNADI, VARTHOOR, PUTHIYAKAVU,
THIRUVANANTHAPURAM RURAL,
THIRUVANANTHAPURAM DISTRICT, PIN – 695601

BY ADV
SRI.G.SUDHEER, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 31.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BABU, J.

Criminal Appeal No.1310 of 2024

Dated this the 31st day of July, 2024

JUDGMENT

This is an appeal filed under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The challenge in this appeal is to the order dated 10.07.2024 in Crl.M.P No.301/2024 passed by the Court of the Special Judge for the trial of the offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Nedumangad.

2. The appellant is accused No.6 in Crime No.423/2024 of Kilimanoor Police Station. The appellant and the other accused are alleged to have committed the offences punishable under Sections 143, 147, 148, 149, 294(b), 341, 323, 324 and 506 read with Section 308 of IPC and Section 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act').

3. The prosecution case: The victim is a member of Scheduled Caste community. The appellant is not a member of

Scheduled Caste or Scheduled Tribe. On 11.03.2024 at 10.00 p.m., on the premises of Elluvila Temple the appellant and the other accused formed themselves into an unlawful assembly and armed with deadly weapons voluntarily caused hurt to the defacto complainant and others. The appellant and the other accused committed the above act with the knowledge that if they by that act caused death of the victim, they would be guilty of murder.

4. The appellant and the other accused committed the above offences knowing that the victim belongs to Scheduled Caste community.

5. Though the notice was served on the victim he did not turn up.

6. Heard the learned counsel for the appellant and the learned Public Prosecutor.

7. The learned counsel for the appellant submitted that the appellant has been falsely implicated in this crime. It is further submitted that there are no specific allegations against the appellant. It is submitted that in the FIR the name of the appellant has not been mentioned.

8. I have gone through the case diary and related materials.

There is no specific allegation against the appellant. The prosecution prima facie failed to establish the offence under Section 3(2)(va) of the Act. Therefore, the bar under Section 18 of the Act is not applicable. In so far as the other offences are concerned, as stated above, the victim or any of the witnesses so far examined by the Investigating agency have not mentioned any specific role of the appellant in the commission of the alleged offences.

9. The learned counsel for the appellant submitted that the incident happened on the premises of the temple where a large number of people congregated. Based on a wrong identity the appellant has been implicated in the crime, it is submitted.

10. Having regard to the rival submissions, I am of the view that the prosecution failed to establish the *mens rea* of the appellant in the commission of the offences alleged. The prosecution has no case that the appellant used any weapon. No materials have been made available warranting the custodial interrogation of the appellant.

11. While considering the scope of jurisdiction under Section 438 Cr.P.C., the Constitution Bench of the Apex Court in **Gurbaksh**

Singh Sibbia & Ors. v. State of Punjab [(1980) 2 SCC 565] held thus:

> "31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in State v. Captain Jagjit Singh [AIR 1962 SC 253 : (1962) 3 SCR 622 : (1962) 1 Cri LJ 216] , which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail."

12. In **Siddharam Satlingappa Mhetre v. State of Maharashtra [(2011) 1 SCC 694]** the Apex Court held thus:-

> "113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the B.A.Nos.5010 of

> 2021 & Connected cases 40 accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record."

(In **Sushila Aggarwal v. State (NCT of Delhi) [(2020) 5 SCC 1])** the declaration of law in **Siddharam Satlingappa Mhetre** that no condition can be imposed while granting order of anticipatory bail alone was overruled).

13. In **Sushila Aggarwal**, the Constitution Bench of the Apex Court, following the decision in **Gurbaksh Singh Sibbia**, held that while considering an application (for grant of anticipatory bail) the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc.

Having considered the entire circumstances on the touchstone of the precedents mentioned above, I am of the view that the appellant is entitled to anticipatory bail. In the result,

(i) The Criminal Appeal is allowed.

(ii) The order dated 10.07.2024 dismissing Crl.M.P No.301 of 2024 as against the appellant stands

set aside.

(iii) The appellant shall appear before the Investigating Officer on 14.08.2024 between 10.00 AM and 11.00 AM for interrogation.

(iv) The Investigating Officer is directed to release the appellant on bail, in the event of his arrest, on his executing bond for Rs.1,00,000/- (Rupees One Lakh only) with two solvent sureties each for the like sum.

(v) The appellant shall appear before the Investigating Officer on all Mondays between 10.00 AM and 11.00 AM for a period of three months or till the final report is filed, whichever is earlier.

(vi) The appellant shall not influence the witnesses in this case or tamper with the evidence.

Sd/-
K.BABU,
JUDGE

KAS

APPENDIX OF CRL.A 1310/2024

PETITIONER ANNEXURES

Annexure A1	**THE TRUE COPY OF THE FIR IN CRIME NO: 423 OF 2024, OF KILIMANOOR POLICE STATION, THIRUVANANTHAPURAM DISTRICT**
Annexure A2	**THE FREE COPY OF THE ORDER DATED 10.07.2024 IN CRL.M.P. NO: 301 OF 2024 PASSED BY THE COURT OF SPECIAL JUDGE, SPECIAL COURT FOR THE TRIAL OF OFFENCES UNDER SC/ST (POA) ACT, NEDUMANGAD**