



2024:DHC:9118



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:26.11.2024

+ **CRL.M.C. 3383/2019 & CRL.M.A. 31076/2019**

MS. XPetitioner

versus

STATE & ANR.Respondents

Advocates who appeared in this case:

For the Petitioner : Ms. Sunita Arora (DHCLSC), Adv.

For the Respondent : Mr. Sunil Kumar Gautam, APP for the State
with Mr. Kumar Gaurav, Mr. Vipin Kumar,
Mr. Maman Singh, Mr. Mohit Siwas, Mr. Jitin
Dabas & Mr. Bhushan, Advs.
Inspector Vinay Kumar, PS- RK Puram
W/SI Arti, PS- RK Puram
Mr. Siddhath Aggarwal, Sr. Adv. with Mr.
Faraz Maqbool, Mr. Chandan Kumar, Ms.
Sana Juneja, Mr. Harsh Gupta & Ms.
Vismita Diwan, Advs. for R2.

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed seeking cancellation of pre-arrest bail and interim bail granted to the Respondent No. 2, by the learned Additional Sessions Judge-02 ('ASJ'), Patiala House Courts, New



Delhi, *vide* orders dated 22.12.2018 and 01.04.2019 respectively in connection with FIR No. 178/2018 dated 01.06.2018, registered at Police Station RK Puram for offence under Section 376 of the Indian Penal Code, 1860 ('IPC').

Brief Facts

2. Briefly stated, the FIR in the present case was registered based on a complaint dated 28.05.2018 filed by the petitioner, alleging that one Mr. Abhinav Sharma/Respondent No.2, physically exploited the petitioner for four years on the false pretext of marriage.

3. It is alleged that the petitioner and Respondent No. 2 became acquainted in in the year 2014 through professional interactions. The petitioner was employed as Junior Engineer with the Delhi Metro and Respondent No. 2 is a Scientist, employed with the Government of India. Over time, they developed personal relationship, during which Respondent No.2 allegedly promised to marry the petitioner. On the basis of this assurance, the petitioner entered into a physical relationship with Respondent No.2. The relationship reportedly spanned over four years, during which Respondent No.2 is alleged to have established physical relations on multiple occasions under the pretense of marriage.

4. The petitioner further alleged that Respondent No.2 allegedly threatened her of dire consequences, including releasing private photographs of her on social media, if she pursued legal action.

5. Consequently, the petitioner filed a complaint dated 28.05.2018 against Respondent No. 2, to PS RK Puram, whereafter the FIR No. 178 of 2018 dated 01.06.2018 came to be registered.



6. On 04.06.2018, Respondent No. 2 was granted interim bail by the learned Trial Court on the grounds that both the parties were highly educated and mature enough to understand the consequences of the relationship.

7. On 29.06.2018, the petitioner filed a complaint with the the National Commission for Scheduled Castes (NCSC), accompanied by a copy of the FIR and her caste certificate. During the course of the investigation, the then Investigating Officer, WSI Rekha, became aware of this complaint and added Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC/ST Act) to the case. The petitioner was subsequently re-examined. The investigation was thereafter transferred to ACP, DIU, South West District, New Delhi. After further investigation, ACP concluded that the allegations under the SC/ST Act could not be substantiated, and the relevant section was removed from the case.

8. Due to health issues faced by ACP, the investigation was reassigned to ACP, Vasant Vihar, Delhi. Upon reviewing the case and applying Section 8(c) of the SC/ST Act, ACP determined that the offence under Section 3(2)(v) of the SC/ST Act was made out. This section was subsequently added to the chargesheet and brought to the attention of the learned ASJ during the hearing of the pre-arrest bail application filed by Respondent No. 2.

9. On 22.12.2018, the learned ASJ granted pre-arrest bail to Respondent No. 2, noting that both parties were well-educated and fully aware of the implications of their relationship. The court also observed



that Respondent No. 2 had cooperated with the investigation, including handing over his mobile phone to the Investigating Officer, as it contained private photographs of the petitioner, which she feared might be made public. The court found no grounds for custodial interrogation of Respondent No. 2.

10. Subsequently, on 01.04.2019, the learned ASJ granted interim bail to Respondent No. 2, citing that he had already been granted pre-arrest bail and had cooperated with the investigation as required.

11. Being aggrieved by the same, the petitioner has filed the present petition, seeking cancellation of the bail orders dated 22.12.2018 and 01.04.2019, passed by the learned ASJ.

12. The learned counsel for the petitioner submitted that the grant of pre-arrest bail to Respondent No.2 was in clear violation of Section 18 of the SC/ST Act. It was submitted that the learned ASJ had passed the impugned orders without adequately considering the gravity of the offence committed against the petitioner, who belonged to a Scheduled Caste. Furthermore, the interim bail order, being entirely based on the initial pre-arrest bail order, is also unlawful.

13. He submitted that Section 8 of the SC/ST Act raises a presumption that Respondent No.2 was aware of the petitioner's caste status. The learned counsel emphasized that Respondent No.2 had known the petitioner for over four years and was fully aware of her caste identity. This knowledge, combined with his alleged actions, constituted an offence under Section 3(2)(v) of the SC/ST Act. Additionally, it was argued that the charges under Section 376 of the IPC and Section 3(2)(v)



of the SC/ST Act were intricately linked and could not be considered in isolation.

14. He submitted that Respondent No.2, post-grant of pre-arrest bail, has continued to intimidate the petitioner and her family, thereby misusing the liberty granted by the learned Trial court. It was argued that this conduct warrants the cancellation of bail, as Respondent No.2's actions interfere with the administration of justice and create a hostile environment for the petitioner.

15. He submitted that any argument regarding consensual relations between the parties is irrelevant in light of the false promise of marriage and the exploitation rooted in caste-based discrimination. He further submitted that consent obtained under false pretenses does not qualify as valid consent under the law.

16. *Per contra*, the learned counsel for Respondent No. 2 argued that the allegations in the FIR and subsequent statements did not establish that the alleged acts were motivated by the petitioner's caste. He emphasized that to invoke the SC/ST Act, it must be shown that the offense was committed solely because the petitioner belonged to a Scheduled Caste, which was not evident in this case. He pointed out that the petitioner's initial complaint dated 28.05.2018, her statement under Section 164 CrPC recorded on 02.06.2018, and her application to the Commissioner of Police dated 19.06.2018 contained no reference to caste-based offenses. He submitted that the allegations under the SC/ST Act were introduced for the first time in the petitioner's complaint to the



NCSC dated 29.06.2018 and her letter dated 19.07.2018, suggesting an afterthought to implicate Respondent No. 2 and his family members.

17. The learned counsel further argued that this claim was supported by the Status Report dated 17.08.2018, filed by the investigating agency, which initially found no grounds for invoking the SC/ST Act. However, following a change in the investigating officer, the provisions of the SC/ST Act were added, and the case was transferred to a court competent to hear cases under the said Act.

18. He submitted that the significant delay in lodging the complaint is an evidence of *mala fide* intent. The alleged incidents occurred years prior to the filing of the FIR, and no immediate action was taken despite the gravity of the claims. The delay undermines the credibility of the petitioner's assertions and suggests ulterior motives.

19. He submitted that Respondent No.2 has fully cooperated with the investigation and has not attempted to influence witnesses or tamper with evidence. This compliance demonstrates that the respondent poses no threat to the integrity of the judicial process, rendering the cancellation of bail unwarranted.

20. The learned counsel denied allegations of intimidation or misuse of bail by Respondent No.2. He submitted that the petitioner has failed to provide any concrete evidence of misconduct by the respondent post-grant of bail. Mere apprehensions or unsupported claims cannot justify the revocation of bail.

21. The learned counsel argued that the petitioner's claims of false promises of marriage are unsubstantiated and arise from a consensual



relationship. He submitted that consensual relations do not constitute rape even if they involve false promises of marriage unless the promise was false from inception.

22. He further contended that the allegations under the SC/ST Act were introduced belatedly and do not pertain to the initial claims of sexual exploitation. The petitioner's caste was not a factor in the respondent's actions, and the SC/ST Act provisions have been invoked without any factual basis.

23. The learned counsel underscored the principle of presumption of innocence and the fact that bail is the norm, not the exception. Cancellation of bail requires strong and cogent reasons, which are absent in this case. He submitted that supervening circumstances, for the cancellation of bail, must be of such a nature as to lead to the conclusion that the accused does not deserve to be at liberty either by reason of a violation of the conditions of bail or due to supervening conduct upon the misuse of liberty by the accused.

24. He relied upon the following judgments in support of his contentions :

- a. Prathvi Raj Chauhan v. Union of India : (2020) 4 SCC 727
- b. Rahna Jalal v. State of Kerala : (2021) 1 SCC 733
- c. Danish Khan v. State (Govt. of NCT of Delhi) : 2021 SCC OnLine Del 3405
- d. Binay Kumar Chauhan v. The State (NCT of Delhi) : 2020:DHC:3252
- e. Dinesh v. State of Rajasthan : (2006) 3 SCC 771



- f. Deepa Bajwa v. State & Ors. : 2004 SCC OnLine Del 961
- g. Pramod Suryabhan Pawar v. State of Maharashtra : (2019) 9 SCC 608
- h. State v. Sandeep : 2019 SCC OnLine Del 10332
- i. X v. State of Telangana : (2018) 16 SCC 511
- j. Ankit Sharma v. State (NCT of Delhi) : 2014 SCC OnLine Del 3260

Analysis

25. The short question that falls for consideration in this petition is whether Section 18 of the SC/ST Act imposes an absolute bar on the grant of pre-arrest bail in light of the allegations under the SC/ST Act. This question necessitates an examination of whether the complaint makes out a *prima facie* case for the applicability of the provisions under the SC/ST Act.

26. The inclusion of Section 438 in the CrPC underscores the significance of personal liberty and freedom in a democratic society, upholding the timeless principle that every individual is presumed innocent until proven guilty by a court of law. [***Siddharam Satlingappa Mhetre v. State of Maharashtra and Others : (2011) 1 SCC 694***]

27. The SC/ST Act provides stringent safeguards to protect members of Scheduled Castes and Tribes from any atrocities to give effect to the constitutional ideals. At the same time, the Act cannot be converted into a charter for exploitation of citizens.

28. The learned counsel for the petitioner has taken a preliminary objection as regards the maintainability of the pre-arrest bail application



under Section 438 of the CrPC contending that Section 18 of the SC/ST Act bars application of Section 438 CrPC to any case involving an accusation that a person has committed an offence under the statute. It is submitted that Section 18 of the SC/ST Act applies to the present case since Section 3(2)(v) of the SC/ST Act has been added to the offences alleged against Respondent No.2.

29. Section 18 of the SC/ST Act has been enacted to take care of an inherent deterrence and to instil a sense of protection amongst the Scheduled Castes and Schedules Tribes. The provision explicitly excludes the application of Section 438 of the CrPC 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 of the CrPC, notwithstanding any judgment, order or direction of a Court. The same reads as under :

“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

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- (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.”

30. The provisions of Section 18 and 18-A of the SC/ST Act have been interpreted by the Hon’ble Apex Court in ***Prathvi Raj Chauhan v. Union of India*** (supra), wherein it was held as under :

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

31. The same view has been taken in the concurring judgment of S. Ravindra Bhat, J. in the following observations [***Prathvi Raj Chauhan v. Union of India*** (supra)] :

“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.”

32. The Hon’ble Apex Court has clarified that these restrictions will not apply if the complaint fails to establish a *prima facie* case under the Act. Statutory provisions that exclude access to bail are interpreted narrowly to ensure they serve their specific purpose, as such exclusions significantly impact personal liberty. Consequently, the Hon’ble Apex Court in ***Prathvi Raj Chauhan v. Union of India*** (supra), held that the bar on pre-arrest bail would not be triggered unless the complaint *prima facie* indicates an offence under the provisions of the SC/ST Act.



33. The applicability of Section 438 of the CrPC to the cases registered under the SC/ST Act was also dealt by the Hon'ble Apex Court in **Vilas Pandurang Pawar and Another v. State of Maharashtra and Others** : (2012) 8 SCC 795. The relevant observations are reproduced hereinbelow:

“10. The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no court shall entertain an application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. The court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence.

(emphasis supplied)

34. Before advertng to the facts of the case, it is necessary to set-out the relevant provision of the SC/ST Act, which is sought to be invoked by the petitioner. Section 3(2)(v) of the SC and ST Act as it stood at the material time read as follows:

“3. (2) Whoever, not being a member of a Scheduled Caste or Scheduled Tribe—

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(v) commits any offence under the Indian Penal Code, 1860 punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;”

35. The Hon’ble Apex Court in ***Dinesh alias Budha v. State of Rajasthan : (2006) 3 SCC 771***, has held that to invoke Section 3(2)(v) of the SC/ST Act, there must be evidence that the offence was committed solely on account of the victim’s caste. It was held as under:

“15. Sine qua non for application of Section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of the Scheduled Castes or the Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not the case of the prosecution that the rape was committed on the victim since she was a member of Scheduled Caste. In the absence of evidence to that effect, Section 3(2)(v) has no application. Had Section 3(2)(v) of the Atrocities Act been applicable then by operation of law, the sentence would have been imprisonment for life and fine.

36. In ***Patan Jamal Vali v. State of A.P. : (2021) 16 SCC 225***, the Hon’ble Apex Court weighed the primary ingredients for an offence to be made out under Section 3(2)(v) of the SC/ST Act as under :

“53. Under Section 3(2)(v), an enhanced punishment of imprisonment for life with fine is provided where:

53.1. The offence is committed by a person who is not a member of a Scheduled Caste or Scheduled Tribe.

53.2. The offence arises under the Penal Code and is against a person or property and is punishable with imprisonment for a term of ten years or more.

53.3. The offence is committed “on the ground that such person is a member of a Scheduled Caste or Scheduled Tribe” or such property belongs to such a person.



54. The key words are “on the ground that such person is a member of an SC or ST”. The expression “on the ground” means “for the reason” or “on the basis of”. The above provision (as it stood at the material time prior to its amendment, which will be noticed later) is an example of a statute recognising only a single axis model of oppression. As we have discussed above, such single axis models require a person to prove a discrete experience of oppression suffered on account of a given social characteristic. However, when oppression operates in an intersectional fashion, it becomes difficult to identify, in a disjunctive fashion, which ground was the basis of oppression because often multiple grounds operate in tandem. Larrisa Behrendt, an aboriginal legal scholar from Australia, has poignantly stated the difficulty experienced by women facing sexual assault, who are marginalised on different counts, to identify the source of their oppression:

“When an Aboriginal woman is the victim of a sexual assault, how, as a black woman, does she know whether it is because she is hated as a woman and is perceived as inferior or if she is hated because she is Aboriginal, considered inferior and promiscuous by nature?” [Larissa Behrendt, “Aboriginal Women and the White Lies of the Feminist Movement : Implications for Aboriginal Women in Rights Discourse”, 1 Australian Feminist Law Journal 1 (1993), p. 35.]

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56. The Court held that in the absence of evidence to that effect, the offence under Section 3(2)(v) would not stand established. This principle was subsequently followed in a two-Judge Bench judgment of this Court in *Ramdass v. State of Maharashtra* [*Ramdass v. State of Maharashtra*, (2007) 2 SCC 170 : (2007) 1 SCC (Cri) 546] where it was held that merely because a woman belongs to the SC & ST community, the provisions of the SC & ST Act would not be attracted in a case of sexual assault. This Court observed that there was no evidence to prove the commission of offence under Section 3(2)(v) of the SC & ST Act.”

37. As a sequitur, if the primary offence under the IPC is not *prima facie* established, the enhanced punishment under Section 3(2)(v) of the SC/ST Act cannot be invoked. Consequently, the statutory bar under Section 18 of the SC/ST Act, which precludes the grant of pre-arrest



bail, would not apply. In such cases, as consistently held by the Hon'ble Apex Court, courts are not entirely precluded from granting pre-arrest bail to the accused person.

38. In the present matter, the FIR and subsequent complaints fail to establish that the alleged acts of Respondent No. 2 were *prima facie* motivated by caste-based animosity. The petitioner's initial complaint dated 28.05.2018 and her statement recorded under Section 164 of the CrPC on 02.06.2018 indicate that her allegations were centered on a four-year-long consensual relationship with Respondent No. 2, purportedly based on a false promise of marriage. Notably, these initial complaints did not suggest that she was victimized due to her caste status. The allegations under the SC/ST Act were introduced only later in her complaint dated 29.06.2018 to the National Commission for Scheduled Castes (NCSC), raising questions about their credibility and intent.

39. It is pertinent to note that the learned ASJ granted pre-arrest bail to Respondent No. 2 primarily on the grounds that custodial interrogation was not required in the case. The learned ASJ noted that Respondent No. 2 had cooperated with the investigation by appearing before the concerned IO and handing over his mobile phone, which allegedly contained private photographs of the petitioner. This action addressed the petitioner's concerns that Respondent No.2 might misuse the content by making it public.

40. The learned ASJ further observed that both the petitioner and Respondent No. 2 were well-educated individuals who were fully aware



of the implications of their actions and the dynamics of their relationship. The learned ASJ also took note of the fact that the petitioner and Respondent No. 2 had been in a relationship for four years, which allegedly indicated a significant level of mutual involvement.

41. Considering the facts and circumstances of the case, including the long-standing relationship and the absence of any necessity for custodial interrogation, the learned ASJ granted pre-arrest bail to Respondent No. 2 by the impugned order 22.12.2018.

42. As held by the Hon'ble Apex Court in the above noted cases, the Courts, while considering the application under Section 438 of the CrPC, are not precluded from *prima facie* finding out if the offence is made out or not.

43. The nature of allegations shows that the petitioner and Respondent No. 2 had known each other from a considerable period of time. The petitioner also admits that she has been in a physical relationship with Respondent No. 2 from last few years. Even though it is alleged that the same was under the false pretense of marriage, however, it is not denied that the physical relation was with her consent. The petitioner is an educated mature person. No evidence has been adduced, at this stage, to corroborate that the relationship was established on being deceived by the promise of Respondent No. 2, to marry the petitioner.

44. The Hon'ble Apex Court has, time and again, held that the allegation of establishing physical relation on a false promise to marry



gets diluted with a long passage of time especially when no complaint is made in the earlier period.

45. In view of the above, I am of the opinion that the statutory bar under Section 18 of the SC/ST Act does not apply in the present case.

46. Consequently, the pre-arrest bail granted to Respondent No. 2 by the learned ASJ by the impugned order dated 22.12.2018 and the interim bail granted on 01.04.2019 cannot be said to contravene the provisions of the SC/ST Act.

Allegations of Misuse of Bail

47. The petitioner has alleged that Respondent No.2 misused his bail by continuing to intimidate her and her family. However, these claims are not substantiated by any concrete evidence. Bail cannot be cancelled merely because of allegations unsupported by credible evidence. The allegations of misuse of bail must be examined cautiously, as cancellation of bail infringes on the liberty of the accused.

48. In the present case, the respondent has admittedly cooperated with the investigation, and there is no material to demonstrate any breach of bail conditions. The petitioner's apprehensions, while understandable, do not meet the threshold for cancelling the bail.

49. The Court is bound to balance the liberty of Respondent No.2 with the need to ensure justice for the petitioner. In ***Prathvi Raj Chauhan v. Union of India*** (*supra*), the Hon'ble Apex Court underscored the importance of a strict and harmonious construction of



bail provisions, ensuring that justice is neither obstructed by misuse of rights nor jeopardized by unfounded claims.

50. It is clarified that the petitioner is at liberty to approach the Investigating Agency with a formal complaint if there is any credible evidence of Respondent No. 2 violating the conditions of pre-arrest bail. Upon receipt of such a complaint, the Investigating Agency is bound to take appropriate action in accordance with law, which may include seeking cancellation of bail if the allegations are substantiated.

Conclusion

51. After carefully considering the facts, submissions, and legal precedents, this Court finds that the pre-arrest bail and interim bail granted to Respondent No.2 do not warrant cancellation. The allegations under the SC/ST Act are *prima facie* unsubstantiated, the delay in lodging the FIR undermines the petitioner's claims, and there is no evidence of misuse of bail.

52. In view of the above, the present petition is dismissed. However, this Court directs Respondent No.2 to scrupulously adhere to all bail conditions and avoid any contact with the petitioner or her family. The petitioner is at liberty to approach the appropriate forum should any violation of the bail conditions occur.

53. This decision shall not prejudice the merits of the trial.

AMIT MAHAJAN, J

NOVEMBER 26, 2024