

08.01.2025
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as
[ALLOWED]

C. R. M. (A) 4651 of 2024

In Re: An application for anticipatory bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Berhampore Police Station Case No. 961 of 2024 dated 29.06.2024 under Sections 448/323/376/511/509/34 of the Indian Penal Code and added Section 3 of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

In Re: **XXX & Anr.**

... ... Petitioners

Mr. Soumyajit Das Mahapatra,
Mr. Ali Ahsan Alamgir,
Ms. Soma Mal,
Ms. Rabia Khatoon,
Ms. June Modak..

... ... for the petitioners

Ms. Sayanti Santra,
Mr. Arup Sarkar.

... ... for the State

Mr. Navanil De,
Mr. Rajeshwar Chakraborty,
Mr. Srinjan Ghosh,
Mr. Subhrajit Dey,
Ms. Monami Mukherjee.

...for the de-facto complainant.

1. Petitioners contend they have been falsely implicated in a family dispute. Victim had converted Islam and the allegations would not attract offence under Section 3 of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Accordingly, they pray for anticipatory bail.

2. Learned Advocate for the State opposes the prayer for anticipatory bail.

3. Learned Advocate for the de-facto complainant also opposes the prayer for anticipatory bail. He contends anticipatory bail is not maintainable in view of bar under

Sections 18/18A of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. We have considered the uncontroverted allegations in the First Information Report. In the FIR, it is alleged petitioners had abused the victim by taking her caste name. However, it is not clear whether the imputation was made in public view or was heard by any member of the public. No witness has corroborated this fact.

5. Mr. De strenuously argues petitioners knew that the victim was a member of the scheduled caste. They had requisite knowledge that she was a member of the Scheduled Caste when they abused and assaulted her. Hence, bar under Sections 18/18A of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 would be attracted.

6. It is true by amending Act of 2016 the words “.....on the ground that such person is a member of a Scheduled Caste or a Schedule Tribe” have been substituted with the words “....knowing that such person is a member of a Scheduled Caste or Scheduled Tribe” that is to say penal provision under Act of 1989 would be attracted in the event the petitioners are aware that the victim belonged to the Scheduled Caste or Tribe when they commit the offence.

7. However, in the present case the victim had converted to Islam. In the event, a member of the Scheduled Caste converts to a different religion whether he continues to be a member of the said caste has to be determined from attending circumstances viz. evidence regarding the person following the customs and

traditions of the said caste even after conversion. Reference may be made in this regard to ***State of Kerala & Anr. Vs. Chandramohanan***¹. No such evidence is placed on record. On the other hand, it appears the de-facto complainant/victim had described herself by her converted name in the FIR.

8. In this backdrop, it cannot be said petitioner had requisite knowledge that even after conversion to Islam, the victim continued the practices of the Scheduled Caste or not.

9. Appreciating the uncontroverted allegations in the first information report in the backdrop of attending circumstances, we are of the view ingredients of the offences under Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 are not disclosed and bar under Sections 18/18A of the said Act is not attracted. Reference may be made in this regard in the case of ***Shajan Skaria Vs. State of Kerala***².

10. Coming to the case on merits, we find there was a long standing dispute between the parties. Possibility of exaggeration with regard to allegation of disrobing due to prior enmity cannot be ruled out. No injury report supporting assault is placed on record.

11. Hence, we are inclined to grant anticipatory bail to the petitioners.

12. Accordingly, we direct that in the event of arrest, the petitioners be released on bail upon furnishing a bond of Rs.10,000/- each, with two sureties of like amount each, to the satisfaction of the Arresting Officer and also subject to the

¹ (2004) 3 SCC 429 Para 20

² 2024 SCC OnLine SC 2249

conditions as laid down under Section 482(2) of the BNSS. They shall appear before the jurisdictional court and pray for regular bail within four weeks from date.

13. The application for anticipatory bail is, thus, disposed of.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)