

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 6TH DAY OF FEBRUARY 2023 / 17TH MAGHA, 1944

UNNUMBERED BAIL APPL. NO.. 2023(FILING NO.1093 OF 2023)

CRIME NO.623/2022 OF MANNAR POLICE STATION, ALAPPUZHA

CRL.MP.NO.4676/2022 OF SPECIAL COURT UNDER THE SCHEDULED CASTES AND THE SCHEDULED TRIBES

(PREVENTION OF ATROCITIES) ACT , ALAPPUZHA

PETITIONER/4TH ACCUSED:

SIJI

AGED 37 YEARS

S/O MOHANAN, VAROTTIL HOUSE, VALIYAKULANGARA P.O,
KARAZHMA, CHENNITHALA , ALPPUZHA, PIN - 690104

BY ADV S.SUJINI

RESPONDENTS/COMPLAINANTS:

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

2 AJAYAN
AGED 43 YEARS, S/O V.JAYAN , PAKKALYIL,
KUTTEMPEROOR P.O, ALAPPUZHA, PIN - 689623

R1 BY SR.PUBLIC PROSECUTOR SMT.NEEMA T.V.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
06.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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ORDER

Dated this the 6th day of February, 2023

This is an application for bail, filed under Section 438 of the Code of Criminal Procedure (for short 'the Cr.P.C.' hereinafter), by the 4th accused in Crime No.623/2022.

2. Registry raised objection stating that, in this case, involving offences under Section 3(1)(r) and 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the SC/ST (POA) Act' hereinafter), the petitioner herein had approached the Special Court under the SC/ST (POA) Act, by filing Crl.M.P.No.4676/2022, for grant of anticipatory bail and the same has been dismissed by the Special Court. Thereafter, Crl.Appeal No.1291/2022 has been filed by the petitioner before this Court. This Court also dismissed the Crl.Appeal. It is thereafter, a fresh bail application has been filed by the petitioner before this Court. Since Registry is of opinion that such a fresh bail application is not maintainable

before this Court, this matter has been posted at the bench.

3. Heard the learned counsel for the petitioner as well as the learned Public Prosecutor.

4. In this case, the prosecution alleges commission of offences under Sections 143, 147, 148, 323, 324, 308, 379, 427, 506 r/w Section 149 of the Indian Penal Code and Section 3(1)(r) and 3(1)(s) of the SC/ST (POA) Act. The trial court dismissed the anticipatory bail application filed by the petitioner, highlighting the bar under Sections 18 and 18A of the SC/ST (POA) Act. On appeal, this Court also dismissed the same, holding that, this is not a case of anticipatory bail, relying on the decision of the Apex Court reported in **[AIR 2020 SC 1036] Prathvi Raj Chauhan v. Union of India(UOI) & Ors.**

5. So, the legal question arises herein is whether a person apprehending arrest in an offence under the SC/ST (POA) Act, after dismissal of his anticipatory bail application by the Special Court under the SC/ST (POA) Act, and confirmation of the said dismissal in a properly instituted appeal filed before this Court, can seek bail directly before this Court? No doubt, the SC/ST (POA) Act is a special enactment and the

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principle *generalia specialibus non derogant*, that means, special law will prevail over the general law would apply, insofar as the SC/ST (POA) Act is concerned. Section 14-A of the SC/ST (POA) Act deals with appeal.

Section 14-A provides as under:

14-A. Appeals. — (1) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.*

(2) *Notwithstanding anything contained in sub-section (3) of section 378 of the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.*

(3) *Notwithstanding anything contained in any other law for the time being in force, every appeal under this section shall be preferred within a period of ninety days from the date of the judgment, sentence or order appealed from:*

Provided that the High Court may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of ninety days:

Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days.

(4) Every appeal preferred under sub-section (1) shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.

6. As per Section 14-A(2), it has been specifically provided that, an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail. The said provision presupposes the fact that the power to grant or refuse bail or anticipatory bail is vested with Special Court and the High Court can entertain the appeal against the orders passed by the Special Court and cannot directly deal with bail applications. In this matter, after having dismissed the anticipatory bail application, at the instance of the petitioner and also after dismissal of the appeal filed, challenging the said dismissal, by this Court, the petitioner herein filed a fresh petition under Section 438 of the Cr.P.C., directly before this Court. In fact, the said petition is not maintainable.

Therefore, the objection raised by the Registry is perfectly sustainable and it is held that the accused indulging in crime alleging commission of offences punishable under the SC/ST(POA) Act cannot directly approach the High Court and seek bail. If an application for anticipatory bail or regular

bail, once dismissed by the Special Court and this Court also dismissed the appeal, as provided under Section 14-A of the SC/ST (POA) Act, accused cannot directly file fresh bail application before this Court. After the dismissal of the appeal, the challenge against the said dismissal will lie before the Hon'ble Supreme Court.

Sd/-
A. BADHARUDEEN
JUDGE

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//TRUE COPY//

PA TO JUDGE