

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 23RD DAY OF SEPTEMBER 2022 / 1ST ASWINA, 1944

CRL.A NO. 937 OF 2022

AGAINST THE ORDER DATED 2.9.2022 IN CRL.M.P.NO.863/2022 OF

SPECIAL COURT FOR SC/ST(POA)ACT,1989, MANNARKKAD IN CRIME

NO.180/2022 OF AGALI POLICE STATION, PALAKKAD

APPELLANT/PETITIONER/ACCUSED NO.1:

ABBAS R.V,
AGED 68 YEARS,
S/O.VEERANKUTTY, PARAMBIL PEEDIKA,
NJATTARKADAVU, KUMARAMPUTHUR, CHANGALEERI,
PALAKKAD DISTRICT, PIN - 678762.

BY ADV BALAMURALI K.P.

RESPONDENTS/RESPONDENT/STATE & DEFACTO COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031.
- 2 MALLI,
AGED 60 YEARS,
W/O.MALLAN, CHINDAKI, PAZHAYAOORU, MUKKALI P.O,
KALLAMALA, PALAKKAD DISTRICT, PIN - 678582.

FOR R2 ADVOCATE P.V.JEEVESH
SENIOR PUBLIC PROSECUTOR SRI.T.R.RENJITH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
22.09.2022, THE COURT ON 23.09.2022 DELIVERED THE FOLLOWING:

“C.R”

A. BADHARUDEEN, J.

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Crl.Appeal No.937 of 2022

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Dated this the 23rd day of September, 2022

J U D G M E N T

This appeal is directed against order in Crl.M.P.No.863/2022 dated 02.09.2022 on the file of the Special Court for Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 [hereinafter referred to as 'the SC/ST Act' for convenience], Mannarkkad in Crime No.180/2022 of Agali Police Station, Palakkad District. Accused No.1 is the appellant. Respondents are State of Kerala as well as the defacto complainant.

2. The vital questions pose for consideration in this appeal are as under:

i) Whether grant of anticipatory bail is specifically barred in cases involving commission of offences under the Scheduled Tribes (Prevention of Atrocities) Act, 1989?

ii) Is relaxation to Section 18 and 18-A of the SC/ST Act is permissible? If so, to what extent?

iii) How the word 'knowing' in Section 3(2)(va) of the SC/ST Act to be understood?

3. Heard the learned counsel for the appellant Advocate Balamurali, Advocate P.V.Jeevesh appearing for the defacto complainant and the learned Public Prosecutor, in detail.

4. The prosecution allegation is that the accused Nos.1 and 2 in this crime, who are not members of Scheduled Caste or Scheduled Tribe community, criminally trespassed upon the house of the defacto complainant, who belonged to Scheduled Tribe community, at 11 a.m on 08.07.2022 and threatened her with dire consequences, if she would not be abstaining from proceeding with

the Sessions trial pertaining to the death of her son Madhu, going on before the Special Court, Mannarkkad. The specific allegation is that accused Nos.1 and 2, after sharing common intention threatened to murder the defacto complainant, so as to attain ulterior motive in the matter of disturbing trial arising out of the murder of Madhu, who is the son of the defacto complainant. On the above facts, the prosecution alleges commission of offences under Sections 452, 506(ii) and 195A of I.P.C as well as under Section 3(2)(va) of the SC/ST Act.

5. Apprehending arrest in the above case, the appellant/1st accused filed bail application seeking pre-arrest bail before the Special Court and the Special Court apprised the contentions, after hearing the learned counsel for the appellant, the defacto complainant and the learned Public Prosecutor. The Special Court referred Section 18 and 18-A of the SC/ST Act while dismissing the anticipatory bail plea at the instance of the appellant.

6. The learned counsel for the appellant argued that the entire allegations are false and the case is manipulated without any basis. It is submitted by the learned counsel further that the accused is liable to be released on anticipatory bail since no prima facie case made out.

7. It is pointed out by the learned counsel for the defacto complainant as well as the learned Public Prosecutor that grant of anticipatory bail is specifically barred under Section 18 of the SC/ST Act and therefore the court below rightly dismissed the application.

8. Section 18 of the SC/ST Act provides that nothing in Section 438 of the Code of Criminal Procedure shall apply in relation to any case involving the arrest of any person or accusation of an offence committed under this Act.

9. In the decision reported in [(2012) 8 SCC 795 : MANU/SC/0732/2012], *Vilas Pandurang Pawar & anr. v. State of*

Maharashtra & Ors. the Apex Court held as under:

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.

10. In another decision reported in [(2014) 15 SCC 521 : MANU/SC/0407/2013], ***Shakuntla Devi v. Baljinder Singh***, the Apex Court held as under:

*The High Court has not given any finding in the impugned order that an offence under the aforesaid Act is not made out against the Respondent and has granted anticipatory bail, which is contrary to the provisions of Section 18 of the aforesaid Act as well as the aforesaid decision of this Court in ***Vilas Pandurang Pawar*** case, MANU/SC/0732/2012 : (2012) 8 SCC 795. Hence, without going into*

the merits of the allegations made against the Respondent, we set aside the impugned order of the High Court granting bail to the respondent.

11. In fact, after the decision of the Apex Court in [(2018) 6 SCC 454], ***Dr.Subhash Kashi Nath Mahajan v. The State of Maharashtra***, SC/ST Act was amended and Section 18-A got incorporated. As per Section 18-A(1), for the purpose of this Act, - (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. Section 18(2) further provides that 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.

12. In the decision reported in [2020 (2) KHC 423 : AIR 2020 SC 1036 : (2020) 4 SCC 727 : MANU/SC/0157/2020],

Prathvi Raj Chauhan v. Union of India(UOI) & Ors., a 3 Bench of the Apex Court considered the impact of Section 18-A and it was held that *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.* Thus the law is settled by the Apex Court after incorporation of Section 18-A also that there is no absolute bar in entertaining an application for anticipatory bail in cases alleging commission of offences under the SC/ST Act if the prosecution allegations do not constitute any offence under the SC/ST Act and the court has the power to grant anticipatory bail if the prosecution allegations do not make a *prima facie* case.

13. In this matter, the prosecution alleges commission of offences under Sections 452, 506(ii) and 195A of I.P.C and thereby offence under Section 3(2)(va) of the SC/ST Act is also alleged to

be committed.

14. Section 3(2)(va) of the Act provides as under:

"3. Punishments for offences of atrocities:--

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,--

xxxx xxxx xxxxx

(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine.

xxxx xxxx xxxxx"

15. Reading Section 3(2)(va) it is emphatically clear that commission of offences specified in the schedule would attract an offence under Section 3(2)(va) of the SC/ST Act. In order to attract the said offence, commission of the offences punishable under the I.P.C, shown in the schedule, should be committed by the accused against a member of the Scheduled Caste or Scheduled Tribe "knowing that such person is a member of a Scheduled Caste or

Scheduled Tribe".

16. Now the question is, how the word "knowing", in Section 3(2)(va) of the SC/ST Act to be understood and interpreted. In this connection, reference to Section 8(c) of the SC/ST Act is apposite. Section 8(c) provides that *the accused was having personal knowledge of the victim or his family, the court shall presume that the accused was aware of the caste or tribal identity of the victim, unless the contrary is proved.*

17. Therefore, it is clear that while considering the question as to whether an accused committed offence under Section 3(2)(va) of the SC/ST Act after trial, the word "knowing" or knowledge, has to be found on the basis of evidence tendered. When considering the question of prima facie case for the purpose of considering plea of bail during investigation and the period before trial, the knowledge shall be understood and inferred from the prosecution records.

18. On perusal of the schedule in the SC/ST Act, Section 506 of I.P.C is an offence in the schedule and therefore commission of offence under Section 506 would attract an offence under Section 3(2)(va) of the SC/ST Act.

19. To summarise, in the present case, the knowledge of the accused as to the status of the defacto complainant as a member of the Scheduled Tribe community could very well be inferred prima facie from the prosecution materials. Therefore, prima facie commission of offence under Section 3(2)(va) of the SC/ST Act is made out. Thus, in this case Section 18 and 18-A of the SC/ST Act would apply and therefore, anticipatory bail cannot be granted.

20. In this matter, it is reported by the Investigating Officer that arrest and custodial interrogation of the appellant are necessary to accomplish effective investigation and successful prosecution. It is reported further that the appellant threatened all the witnesses in Madhu murder case and consequently, 13 out of the 17 witnesses

examined in Madhu murder case turned hostile to the prosecution. The learned Public Prosecutor also highlighted this fact while opposing grant of anticipatory bail.

21. Having considered the facts of this case, as espoused, and on consideration of the specific bar under Section 18 and 18-A(2) of the SC/ST Act, this is not a fit case for granting anticipatory bail to the appellant. Therefore, the Special Court rightly dismissed the application and the said dismissal does not require any interference in any manner.

Accordingly, this Criminal Appeal stands dismissed.

Sd/-

(A. BADHARUDEEN, JUDGE)

rtr/