

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-57392-2022
Date of Decision:08.12.2022

Vinod Bindal

...Petitioner

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr.Vishal Garg Narwana, Advocate for the petitioner

Mr.Munish Sharma, AAG, Haryana

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1. Notice of motion.

On the asking of this Court, Mr. Munish Sharma, AAG, Haryana accepts notice of motion.

2. The petitioner in the aforesaid anticipatory bail application filed under Section 438 of the Cr.P.C. is alleged to have committed offences punishable under Section 3 (1) (r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'SC/ST Act') and Section 384 of the IPC in case FIR No.948 dated 19.10.2022 registered at Police Station Assandh, District Karnal.

3. The moot point which requires consideration by this Court in the present case is whether in the matter of grant of anticipatory bail to the petitioner alleged to have committed offences under the SC/ST Act can approach this Court directly by filing

application under Section 438 of the Cr.P.C. for grant of anticipatory bail when the said statute provides an absolute prohibition on the applicability of the provisions of section 438 of Cr.P.C.

4. The present FIR has been registered by the police on the statement of Mr. Dinesh Kumar, Secretary and Executive Officer, Market Committee Assandh, Karnal against the petitioner on the complaint of Pardeep Kumar, Incharge, HSWC. Said Pardeep Kumar has given a written complaint in the office of aforesaid Mr.Dinesh Kumar regarding being threatened by the petitioner saying caste related words, demanding money by causing mental humiliation.

5. Learned counsel for the petitioner, *inter alia*, submits that the petitioner who is a journalist in Punjab Kesri, while doing his official duty had published some news items regarding the inaction of the police and the embezzlements being committed in the Market Committee, Assandh, due to which the complainant has falsely implicated the petitioner. As per the contents of the FIR, offence under Sections 384 of the IPC and Section 3 (1) (r) of the SC/ST Act is not made out against the petitioner. He further submits that the petitioner can directly approach this Court without approaching any other court for grant of anticipatory bail under Section 438 of the Cr.P.C. In support of his contention, learned counsel relies on **Onkar Nath Agrawal and others vs. State, 1976 Criminal Law Journal, 1142 (FB) (Allahabad), Mohan Lal and others etc. vs. Prem Chand and others etc., AIR 1980 (Hmachal Pradesh) 36 (FB), Balan vs. State of Kerala, 2003 (4) RCR (Criminal) 733 (DB), Ranjit Singh Virk vs. State of Punjab, 1997 (3) RCR (Criminal), 207 etc.**

6. I have heard learned counsel for the parties and perused the paper-book.

7. The Hon'ble Supreme Court had in **Prathvi Raj Chauhan v. Union of India and Others (2020) 4 SCC 727** observed that if the complaint does not make out a prima facie case for applicability of the provisions of the SC/ST Act, the bar created by section 18 and section 18A(1), shall not apply. The difficulty arises as to the forum where the "absence of prima facie case" can be agitated. The aforementioned judgment is coupled with the creation of Special Courts and the conferment of appellate jurisdiction on the High Court under sections 14 and 14A of the SC/ST Act.

8. Hence the questions were required to be altered and the same are rephrased as follows:

“(i) In view of the observations in **Prathvi Raj Chauhan's case**, whether the High Court alone has jurisdiction to consider an application under section 438 or under section 482 of Cr.P.C?

(ii) In view of the observations in **Prathvi Raj Chauhan's case**, whether the High Court has concurrent jurisdiction to consider an application under section 438 of Cr.P.C?

(iii) In view of the observations in **Prathvi Raj Chauhan's case**, can an accused, whose application for anticipatory bail was rejected by the Special Court or the Sessions Court, file another application under section 438 of the Cr.P.C before the High Court or should it be by an appeal under section 14A of the Act?

(iv) In view of the observations in **Prathvi Raj Chauhan's case**, is it the Sessions Court or the Special Court that must consider the application for anticipatory bail?”

9. In order to comprehend the contours of the questions formulated by this Court, it is necessary to mention that section 18 of the SC/ST Act created a bar for entertaining applications for anticipatory bail. However, by the judgment in **Dr. Subhash Kashinath Mahajan v. State of Maharashtra and Another (2018) 6 SCC 454**, it was held that anticipatory bail could be granted if a prima facie case of commission of an offence under the Act is not made out or if it can be shown that the allegations were false. Other directions were also issued by the Court in the aforesaid decision. Subsequently, by the judgment in **Union of India v. State of Maharashtra and Others (2020) 4 SCC 761** few of the directions issued in **Dr. Subhash Kashinath's** judgment were reviewed. In the meantime, section 18A of the SC/ST Act was introduced to overcome the rigour of the aforementioned judgments. The validity of the said amendment was considered by the Supreme Court in the decision in **Prathvi Raj Chauhan's case (supra)**. While affirming and reiterating right of an applicant to seek anticipatory bail, despite the bar under sections 18 and 18A of the SC/ST Act, the Supreme Court made certain observations, which are as follows:-

“11. Concerning the applicability of provisions of Section 438 Cr.PC, 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 18A(i) shall not apply.

In the concurring Judgment, it was also observed that:

“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.

33. I would only add a caveat with the observation and emphasise that while considering any application seeking pre-arrest bail, the High Court has to balance the two interests: i.e. that the power is not so used as to convert the jurisdiction into that under Section 438 of the Criminal Procedure Code, but that it is used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR, and further also that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. I consider such stringent terms, otherwise contrary to the philosophy of bail, absolutely essential, because a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament.”

It is trite law that the power to grant anticipatory bail is statutory in character. The aforementioned power can be traced to section 438 of Cr.P.C, which is no doubt concurrent in nature, being vested with both the Sessions Court as well as the High Court.

10. However, the SC/ST Act has carved out a special procedure, and Special Courts/Exclusive Special Courts for dealing with the cases involving offences against the Scheduled Castes and Scheduled Tribes have been established. The words ‘Special Court’ and ‘Exclusive Special Court’ are defined in Section 2(d) and Section 2(bd), while the Special Court and Exclusive Special Court are dealt with under section 14 of the Act. A bare reading of the said provision is indicative of the exclusivity of the Special Courts contemplated by the Parliament.

11. Apart from the above, the special scheme contemplated

under the Act indicates a deviation from the general law and confers upon the Special Courts, certain exclusive and distinctive powers hitherto not available under the general laws. The power to take direct cognizance and Chapter IVA, dealing with the 'Rights of Victims and Witnesses' are both a paradigm shift from the general law. Further section 15A provides a right for the victim to apply to the Special Court to summon any party for production of documents, conferred a right for the victim to be heard even in the matter of bail, a right to obtain complete protection, confers power on the Special Court to grant travelling, and maintenance expenses and to order rehabilitation of the victim even during the investigation stage, apart from the power to take action and pass orders for the protection of the victim during all stages of investigation, inquiry and trial. Such powers are absent in a regular court. On a consideration of the entire scheme of the Act, including the powers of the Special Courts, it can be concluded that the Act has given primacy and exclusivity to the Special Courts. The above-noted intention of the Parliament cannot be ignored while considering the questions raised.

12. Having concluded that exclusivity has been given to the Special Courts established under the SC/ST Act, it is necessary to consider the nature of bail that can be granted by such Courts. Section 14A(1) & (2) of the SC/ST Act provides for an appeal to the High Court against any order other than an interlocutory order and also against an order granting or refusing bail.

13. Thus, if, despite the bar under sections 18 and 18A of the SC/ST Act, if anticipatory bail can be granted, as observed in **Prathvi Raj Chauhan's case**, obviously, the same can only be in the exercise

of the power to grant bail. In order to avoid unintelligible, incongruous, and vague results and also to avoid confusion among all persons, it is necessary to assign an effective meaning to the expression 'bail' in section 14A of the SC/ST Act, also. Thus the word bail in section 14A(2) would include anticipatory bail also.

14. Section 14A has conferred only an appellate jurisdiction on the High Court in contradistinction to original jurisdiction for the grant of bail. The use of the non-obstante clause in the provision indicates the intention of the Legislature to exclude a dichotomy of jurisdiction upon the High Court to handle bail applications in its original and appellate jurisdiction. This is the inevitable conclusion that can follow from the words used in section 14A and the scheme of the SC/ST Act.

15. In this context, it would be apt to refer to a few decisions of the Supreme Court which are relevant. In **Usmanbhai Dawoodbhai Memon and Others v. State of Gujarat (1988) 2 SCC 271**, while considering the question of exclusion of jurisdiction of the High Court under the provisions of the TADA Act, it was held that having regard to the provisions of the TADA Act there was a complete exclusion of jurisdiction of the High Court to entertain a bail application under section 439 of the Cr.P.C.

16. Similarly, in the decision in **State of Andhra Pradesh through Inspector Genral, National Investigation Agency v. Mohd. Hussain alias Saleem (2014) 1 SCC 258**, while dealing with the provisions of the MCOA Act, 1999 and UAPA Act, 1967, it was held that, in those statutes, the offences were triable only by a Special Court and an application for bail had to be moved before the Special

Court itself. After considering the various provisions, the Supreme Court concluded that the remedy of an application for bail under section 439 or under section 482 is barred, and the application had to be filed before the Special Court itself.

17. Yet again, in the decision in **State of Gujarat v. Salimhai Abdulgaffor Shaikh and Others (2003) 8 SCC 50**, while dealing with a case under POTA, the Supreme Court held that once a bail application is rejected, the party will have to move the High Court in appeal. It was further observed that it would be too incongruous a situation where the High Court exercised its jurisdiction on its original side as well as on its appellate side and to interpret a provision in such a manner would be an anomaly.

18. With the aforesaid principles in mind, when the scope of section 14A of SC/ST Act is appreciated, it is evident that a specific right of appeal to the High Court, has been given against 'any order granting or refusing bail'. Further, a conscious and explicit intention is revealed from the provisions of the SC/ST Act to exclude the exercise of jurisdiction under section 438 of the Cr.P.C. However, taking note of the mandate of the Constitution, the Supreme Court observed in **Prathvi Raj Chauhan's** case that the powers for granting anticipatory bail can be exercised only in exceptional circumstances, and in the concurring judgment, it was observed that the 'Court has the inherent power to direct a pre-arrest bail'.

19. Though great weight ought to be given to the language actually used by a Judge, there is always a peril in treating the words of a judgment as though they are statutory enactments. It is elementary that a judgment of the Supreme Court or that of a High

Court ought not to be interpreted as a statute. It is pertinent to refer to the decision in **M/s Amar Nath Om Prakash and Others v.State of Punjab and Others (1985) 1 SCC 345**, wherein Justice O Chinnappa Reddy in his inimitable style, explained that *“observations of the learned judges are not to be read as Euclid's theorems, nor as provisions of the statute. These observations must be read in the context in which they appear. I consider it proper to say that judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussion but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes.”* Thus the observations in **Prathvi Raj Chauhan's** case cannot be interpreted to mean that the express stipulation in the statute and the scheme of the statute has to be ignored.

20. On analysis of the provisions of the said Act, it is crystal clear that only the Courts constituted under Section 14 of the Act can have jurisdiction to entertain an application for bail and the power of the Court of Sessions and of the High Court in its original criminal jurisdiction to entertain an application under Section 438 or Section 439 of the Cr.P.C had been impliedly taken away by Section 14A of the said Act. An appeal will lie only against an order of the Special Court or the Exclusive Special Court and unless there is an order of the Special Court refusing bail, the accused will have no right to file an appeal before the High Court praying for grant of bail to them. The existence of an order of the Special Court was held to be a sine qua

non for approaching the High Court.

21. The principles laid down by all the decisions mentioned above reiterate and point to the explicit intention of the Parliament to exclude the original jurisdiction of the High Court for granting bail. There is also an explicit intention to exclude the jurisdiction of the High Court to grant anticipatory bail. The statute, therefore, in its express stipulation, clearly indicates that a bail application can be filed under the SC/ST Act only before the Special Court or the Exclusive Special Court. The original jurisdiction of the High Court under section 438 of Cr.P.C is therefore, expressly and by necessary intendment completely excluded.

22. Under SC/ST Act, there is special procedure and Special Courts/Exclusive Special Courts for dealing with the cases involved in the offences against the scheduled castes and scheduled tribes. A bare reading of the provisions of Sections 2(d), 2(bd) and Section 14 categorically indicates that the said offences are exclusively triable by Special Courts as contemplated by the legislature.

23. It is further to be kept in mind that under the special provisions of the SC/ST Act, the right of the victim and the witnesses are on a higher pedestal than provided under the Cr.P.C. From the entire scheme of the Act, including the powers of the Special Courts, it can be concluded that the Act has given primacy and exclusivity to the Special Courts over normal Courts. The expression 'bail' in Section 14A of SC/ST Act includes anticipatory bail as well.

24. Thus, once the original jurisdiction of the High Court for grant of bail is excluded, an application for anticipatory bail invoking

the concurrent jurisdiction under section 438 Cr.P.C, which is also original in its nature and scope stands excluded. Consequently, the appellate jurisdiction alone can be exercised by the High Court, under section 14A.

25. Similarly, the Special Courts alone have jurisdiction to consider the bail applications and not the Sessions Court. It is a different matter that the Sessions Courts in Kerala are notified as the Special Courts. Notifying the Sessions Courts as Special Courts cannot derogate from the requirement of the statute, that, only the Special Court can consider the matters including applications for bail arising under the SC/ST Act.

26. Thus, in view of the aforesaid principles enumerated above, firstly, the petitioner should have approached the Special Court for grant of anticipatory bail under Section 438 of the Cr.P.C. The order granting or rejecting the anticipatory bail under the provisions of SC/ST Act shall be amenable to the appellate jurisdiction of the High Court under Section 14A of the Act and not Section 438 Cr.P.C. In this context, I draw support from the Full Bench decision of the Allahabad High Court in **Re: Provisions of Section 14A of SC/ST (Prevention of Atrocities Amendment) Act, 2015 (2018 Cri.LJ 5010)** and the judgment of the High Court of Kerala at Ernakulam in **K.M.Basheer vs. Rajani K.T. And others, 2022 LiveLaw (Ker) 472.**

27. The judgments relied upon by the learned counsel for the petitioner are on different footings and are not applicable to the facts and circumstances of the present case.

28. For the foregoing reasons, the present petition for anticipatory bail is dismissed. However, the petitioner will be at liberty to approach the Special Court for appropriate relief.

(ASHOK KUMAR VERMA)
JUDGE

8.12.2022
MFK

Whether speaking/reasoned Yes

Whether Reportable Yes



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