

IN THE COURT OF THE I ADDL. SESSIONS AND
SPECIAL JUDGE, AT CHIKKAMAGALURU.

Present: Sri. **K.L. Ashok**, B.Com.,LL.B,
I Addl. Sessions & Special Judge,
Chikkamagaluru.

Dated this the 01st Day of June 2021

Criminal Misc. No.346/2021

Petitioner

Arjun S/o G.S.Kempe Gowda,
Aged about 34 years,
Sub-Inspector of police,
Gonibeedu police station,
Gonibeedu at and Post,
Mudigere Taluk.
Residing at Megharjuna Nilaya,
7th Ward, 7th Main,
Saraswathipuram, Thuruvekere
Taluk, Tumkur District.

(Represented by Sri. H.M.Sudhakar, Advocate)

Vs

Respondents

1. State by Gonibeedu Police.
2. Punith K.L. S/o Laxmana,
Aged about 22 years,

Coolie, Kirgunda Village,
Gonibeedu Hobli, Mudigere
Taluk, Chikkamagaluru District.

*(Respondent No.1 by the Public Prosecutor, Chikkamagaluru
and respondent No.2 by Sri.P.Parameshwara, Advocate)*

ORDER

The petitioner has filed this petition under Section 438 of Cr.P.C., on line seeking the benefit of anticipatory bail with respect to Crime No.18/2021 dated 22.05.2021 registered by Gonibeedu police for the offences punishable under Section 323, 342, 504, 506, 330, 348 of I.P.C. and under Section 3(1)(a), 3(1)(e), 3(1)(r), 3(2)(va), 3(2)(vii) of SC & ST (Prevention of Atrocities) Amendment Act 2015.

2. *As per the recent decision of Hon'ble High Court of Karnataka rendered in Crl.Petition No.200315/2020 C/w Crl.Petition No.200318/2020 between Mareenna @ Mareppa Vs. State through Shahapur police station, the victim had to be made*

as a party. Accordingly notice was issued to the victim. Notice was duly served on respondent No.2 / complainant, who appeared before the Court through his counsel and has opposed the bail petition.

3. *The brief facts of the Prosecution case are that on 10.5.2021 at 7.30 a.m., the complainant K.L.Puneeth was in his house situated at Kirugunda Village, Gonibeedu Hobli, Mudigere Taluk. At that time one K.E.Ramesha, K.B.Paramesh and their group came near his house and asked him to come along with them to talk about the phone call made by him to one Anuya. But as there was huge mob, the complainant did not go with them and telephoned to 112 and sought help. Immediately the police rushed to the spot and enquired them. But the said mob did not agree and hence they called the accused, who is the P.S.I., of Gonibeedu police station. The accused came there and without enquiring the complainant asked him to board the jeep. When the complainant*

questioned the act of the accused, the accused abused him in filthy language and assaulted him. Later the accused took the victim to the police station and took him to the room situated in the upstairs and removed his clothes, tied his hands and legs to a pole and put the iron road across his thigh and hanged him. Later the accused assaulted him at his whims and fancy and asked him with regard to the relationship with him and Anuya. Though the complainant told that he has no connection with her, but he has talked with her only about six months back and the said matter was settled. In spite of that the accused abused the complainant in filthy language and assaulted him mercilessly and due to the same the complainant sustained bleeding injury to his body. Due to the ill-treatment given by the accused, the complainant agreed for the say of the accused and in spite of that the accused assaulted him and abused him by taking the name of his caste. As he was thirsty, the complainant asked the accused to provide water and at that time

the accused called another accused by name Chethan and as per the direction of the accused said Chethan passed urine to the mouth of the complainant. Thereafter the accused made the victim lick the urine from the ground. Due to the ill-treatment and cruelty given by the accused, the complainant lost sensation in his legs and other parts of the body. The accused also threatened the complainant not to disclose the said incident to anybody and did not allow the parents of the complainant to talk with him. Being aggrieved by the same, the complainant has lodged the complaint against the accused.

4. *The petitioner has moved this bail petition pleading his innocence. According to him, he has not committed any offence alleged against him. There are no reasonable grounds to believe that the petitioners have committed the offences alleged against him. That he is a respectable police officer and he hails from respectable family having deep roots in the society. That the*

respondent No. 2 pressurising the respondent No. 1 to arrest the petitioner and the petitioner has got his family members to look after and he is the permanent resident of cause title address. That investigation has already been closed and he is not required for further investigation. That he would abide by the conditions that may be imposed by the court. Accordingly has sought the benefit of anticipatory bail.

5. *The learned Public Prosecutor has filed her objections along with I.O. Report stating that there is a prima-facie case against the petitioner. That there is a clear bar to grant anticipatory bail to the petitioners under Section 18(2) of SC & ST (Prevention of Atrocities) Act. That the petitioner had failed to make out sufficient grounds for grant of anticipatory bail. That the petitioner is the P.S.I., and if he is released on bail, he may use his influence and there are possibilities of the petitioner tampering the case of the prosecution. That the*

offences alleged against the petitioner are heinous in nature. That looking to the grievousness of the offence, the matter is referred to C.I.D., and also filed application seeking to record the statement of the complainant and other witnesses under Section 164 of Cr.P.C. That still the objects used for committing the offence has to be recovered. That if the petitioner is released on bail, he may abscond and he may not be available for investigation. Accordingly have sought rejection of the bail petition. Sri PPR the learned counsel for the 2nd Respondent / victim has adapted the objections of the prosecution.

6. *For disposal of this petition the following points arise for consideration.*

1. *Whether the petitioner is entitled for the benefit of anticipatory bail under section 438 of Cr.P.C.?*

2. *What order?*

7. *Both side have argued in the similar lines of their pleadings. Having heard the arguments of both side and on*

perusal of the records, my findings on the above points are as under:

Point No.1 : In the Negative.

*Point No.2 : As per final order
for the following:*

REASONS

8. **Point No.1:-** *The respondent police have registered Crime No.18/2021 against the accused alleging commission of the offences punishable under Section 323, 342, 504, 506, 330, 348 of I.P.C. and under Section 3(1)(a), 3(1)(e), 3(1)(r), 3(2)(va), 3(2)(vii) of SC & ST (Prevention of Atrocities) Amendment Act 2015. Prosecution side have argued that since the provisions of SC & ST (Prevention of Atrocities) Act has been invoked, there is a bar under Section 18 of the said Act to grant anticipatory bail and hence that the petition is not maintainable. Though there is a bar under Section 18 of SC & ST (Prevention of Atrocities) Act, it is pertinent to note that the Hon'ble Supreme Court of India in the case of **Prithvi Raj Chauhan v. Union of India**, reported in*

AIR 2020 SC 1036 has held that said bar is not absolute and where there is no prima facie case, Courts can exercise its power under Section 438 of Cr.P.C. Said position of law was also laid down by Hon'ble High court of Karnataka in the decision rendered in **CrI. Petition 2433/2020 dated 10th June 2020 between Appoji Reddy and another V/s State of Karnataka.** Therefore it is necessary to see whether there is a prima facie case as against these accused.

9. In this case, the accused is a police sub-inspector. Therefore it is necessary to consider whether he can avail the protection accorded under section 197 of the Cr.P.C. In this regard it is necessary to consider whether any prior sanction was required to prosecute the accused, who is a government official. Admittedly illegal detention and custodial torture are not part and parcel of the duty of the police officers. Therefore the protection under Section 197 of Cr.P.C., does not come into picture and no prior sanction would be required to proceed against such police officers. The **Hon'ble High Court of Karnataka** in

a recent decision dated 24.05.2021 in Criminal Petition No.996/2021 the case of S.Shiva Kumar and others Vs. State of Karnataka by Chikkaballapura Rural police and another has held that in cases of illegal detention and custodial torture, no prior sanction is necessary. Therefore it cannot be held that a prior sanction was required and as such the accused would be entitled for bail on this ground.

10. Sri. HMS, the learned counsel for the petitioner has argued that there is inordinate delay in lodging the complaint. Thus according to him the case itself is doubtful and the delay itself establishes that there is no prima facie case. In this case, the alleged incident has taken place on 10.05.2021. But police complaint was lodged only on 22.05.2021 after a lapse of 12 days. Usually when there is a delay in lodging the complaint, it does raise some doubts regarding the bonafides of the complaint. But that cannot be applied as an omnibus rule. Delay in lodging the complaint depends on facts and circumstances of each case, it depends on the nature of the crime, it also

depends on position of the perpetrators of the crime. At the same time if the Prosecution is able to extend the delay satisfactorily, then such delay in lodging the complaint need not be fatal.

11. *In this case, it is pertinent to note that the alleged offence has been committed by a police officer. This victim is a layman, who has no influence. When he has been bundled and taken to police station and was tortured in custody, the victim just would not know what he should do next. He totally would be drawing a blank regarding his future action. He cannot straight away walk into police station and lodge a complaint against the officer in-charge. That is totally unthinkable. He also can not approach the higher officials. The victim being a rustic villager that too belonging to weaker community, cannot be expected to walk freely in to the office of higher officials and lodged a police complaint against their own subordinate. Such being the case, it does take some time for the victim to assess his situation and thereupon*

he can take any possible action. Therefore this would result in delay in lodging the complaint.

12. *The alleged nature of incident is most heinous in nature. Not only the victim has been urinated upon, but he has been made to lick the urine from the floor. Such an act of atrocity destroys the personal dignity of any person. Personal dignity is ones inner feelings and attitudes of self-love, self-care, self-esteem, and self-appreciation. It's the way one thinks and feels about himself. A person, who has suffered this kind of alleged atrocity would be in utter shock and definitely would not normally be in a position to disclose the incident to any one or seek redressal of the same. He takes time to process the things. He has to muster the courage to disclose the incident to his near and dear ones. This would not be easy and would take some time. Hence the complainant is not expected to lodge the police complaint at the earliest. Therefore at this stage it cannot be held that the delay in lodging the police complaint helps the accused in any manner.*

13. *As discussed earlier, under Section 18A of SC & ST (Prevention of Atrocities) Act, there is a bar for considering the anticipatory bail petition. The only exception is where there is no prima facie case. Therefore it is necessary to see whether there is a prima facie case in the present case. It was argued by the learned Counsel for the accused that there is a counter case filed against this victim by another lady named Smt. Anuhya. The copy of F.I.R. of said case has been furnished, but it is pertinent to note that said F.I.R. in Crime No.10/2021 of Gonibeedu, is registered on 23.05.2021, which is after registering of the present complaint. Further the incident in the present complaint has happened on 10.05.2021. The fact that this lady rushes to lodge her complaint soon after this victim has registered his, raises serious doubts regarding the unseen hands and as such on her complaint. Such being the case, the complaint lodged by one Smt. Anuhya appears to be lodged in order to safeguard the present accused. Even otherwise it is the complaint lodged by Smt. Anuhya and not by the*

present accused. The victim cannot have any grievance against this accused based on said complaint. Even otherwise the complaint of Smt.Anuhya had not at all been lodged when the accused had illegally detained the present victim. Whatever may be the grievance of the victim or this accused, said complaint lodged by Smt. Anuhya is neither a counter case nor has any bearing on this bail petition. Therefore said complaint does not bestow any benefit to this accused. Even otherwise, an accused has a right to be treated with dignity, Merely because a case has been registered against him does not mean that he is fair game to be tortured.

14. *It was argued by the learned Counsel for the petitioner that the complaint discloses that the victim had discussed the matter with the community leader and as such it draws an inference that the complaint is fabricated. But it is not so. This victim having suffered such a shock would not be able to keep the same suppressed and it is only natural that he has discussed it with his community leaders. Mere*

discussion with community leaders regarding the next course of action does not mean that the complaint is fabricated. This is only the normal conduct of a person, who has suffered an atrocity. Therefore this argument does not hold good.

15. *It was also further argued by the petitioner side that the complaint seeks suspension of the accused from service. According to the petitioner, seeking his suspension means a complaint is not a bonafide one. There is no hard and fast rule for the format of a complaint nor there is any rule that the complaint should only seek redressal with respect to penal provisions. Here the victim has suffered an atrocity and has sought the relief, which according to him are bonafide. Admittedly his first reaction would be to seek protection from the retaliative action of the person who has committed atrocity and as such seeking the suspension of the petitioner is most natural in the circumstance. Therefore the averments of the complaint do not raise any doubts at this stage.*

16. *Coming to other factors of existence of a prima facie case, The complaint speaks that on 10.05.2021 a group of people came to the house of the victim and they wanted to have a discussion with him. At that time the victim has called the police assistance by calling 112. Even after arrival of the police as the other group of people did not agree, the present accused was called to attend. These facts are not in dispute at all. Thereafter the accused has taken the victim in his police jeep and is alleged to have committed the case of atrocity. When this victim was taken to police station, no crime was registered against him, nor was he a suspect. Without there being anything, the accused has dragged the victim to police station where this victim was kept in illegal detention and suffered custodial torture. It is relevant to note that the accused had no business to drag the victim to police station. The victim was not provided with any kind of legal aid. He was not arrested let alone a case being registered against him at that time. As discussed earlier, the incident is most heinous in nature. It shatters the dignity of a*

person and he would not know what is to be done. However it appears that this victim has taken the courage and has discussed the matter with his community leaders. Any person, who has suffered this kind of atrocity would not go around canvassing the same. It would be too humiliating for him even to discuss the matter with his friends and relatives. Therefore it is just not possible to believe that this victim would fabricate such an incident that he was urinated on and he had licked the urine of any other person. Further, the delay in lodging the complaint itself reflects the dilemma suffered by the victim. Such being the case, it is to be held that there is a clear prima facie case against the accused.

17. *The learned Public Prosecutor has produced the copies of the Investigating Officer report and photographs of the injuries found on the victim . These photographs reflect that the victim has suffered injuries on his hands and legs, which are supported by a medical certificate. This corroborates the case of illegal detention and custodial*

*torture. This is not the way a police officer is expected to act. A police officer is the custodian of the public trust and faith. He is expected to protect the innocent. Infact the learned Public Prosecutor has relied upon the decision of **Hon'ble High Court of Karnataka rendered on 24.05.2021 in W.P.No.2910/2021 between Kumari Deepika Vs. State of Karnataka and others**, where the Hon'ble High Court was pleased to cancel the anticipatory bail granted to the accused police officers. Though the facts are different here, the circumstances are similar. Such being the case, this accused cannot be given the benefit of anticipatory bail.*

18. Sri.P.P.R., learned Counsel for the victim has also argued that this Court should consider the effect of granting anticipatory bail to the accused on the society. His argument cannot be brushed aside lightly. When there is a clear prima facie case, it attracts the provision of Section 18A of SC & ST (Prevention of Atrocities) Act and prohibits considering the anticipatory bail. At the same time when the

alleged incident is so heinous and shocking in nature, extending the benefit of anticipatory bail would have serious adverse impact on the society. It would send a wrong message that the protective machinery of the State can do no wrong and the people have no protection. This is also one of the reason for not extending the benefit of anticipatory bail to the petitioner / accused.

19. *At the same time, it is also necessary to consider the status of the accused. The accused is a powerful police officer who has allegedly shown that he can take the law into his own hands and go to any extent. If he is granted the benefit of anticipatory bail, certainly the victim would not be safe. The life and liberty of the victim would be at constant threat. At the same time the investigation is still in its infancy and for an unbiased investigation it would be just and necessary that the accused should not be in a position to exercise his power and influence the investigation. As discussed earlier, when there is a clear prima facie case against the accused, the provisions of Section 18A of SC & ST*

*(Prevention of Atrocities) Act comes into picture and it prohibits granting of anticipatory bail in favour of the accused. Accordingly, point No.1 is answered in the **Negative**.*

20. **Point No.2:-** *In the light of above discussions, I proceed to pass the following:*

ORDER

The petition filed by the petitioner Arjun under section 438 of Cr.P.C. is dismissed.

[Dictated to the Judgment Writer, transcribed by him, transcript corrected and then pronounced by me in the open court on this the 1st day of June 2021].

Sd/-

(K.L. Ashok)

*I Addl. District and Sessions Judge,
Chikkamagaluru.*