

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 9TH DAY OF DECEMBER 2022 / 18TH AGRAHAYANA, 1944

CRL.A NO. 1157 OF 2022

CRIME NO.596/2022 OF Valappad Police Station, Thrissur
AGAINST THE ORDER/JUDGMENT IN CRMP 2881/2022 OF ADDITIONAL
DISTRICT COURT, THRISSUR

APPELLANT/ACCUSED:

X
X
BY ADVS.
S.RAJEEV
V.VINAY
M.S.ANEER
PRERITH PHILIP JOSEPH
SARATH K.P.
ANILKUMAR C.R.

RESPONDENTS/STATE/DEFACTO COMPLAINANT:

- 1 STATE OF KERALA
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM
(CRIME NO. 596/2022 OF VALAPAD POLICE STATION,
THRISSUR DISTRICT - 680567), PIN - 682031
- 2 SATHYAN
AGED 48 YEARS
S/O.RAMAN,
ARAKKAPRAMBAIL HOUSE,
KOTHAKULAM BEACH,
VALAPPAD, THRISSUR, PIN - 680567
BY ADVS.
R.ROHITH
HARISHMA P. THAMPI(K/001201/2019)
SRI.G.SUDHEER, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
09.12.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 9th day of December, 2022

This is an appeal filed under Section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, (hereinafter referred to as “the SC/ST (POA) Act, for convenience”) by the appellant, who is the accused in crime No.596 of 2022 of Valappad Police Station, registered alleging commission offence punishable under Sections 3(1)(s) of the SC/ST (POA) Act, challenging order dated 23.09.2022 in CrI.M.P.No.2881/2022 passed by the Special Judge under the SC/ST (POA) Act, Thrissur.

2. Adv.R.Rohith appeared for the defacto complainant, when the defacto complainant was served with notice as mandated under Section 15A(3) of the SC/ST (POA) Act.

3. Heard the learned counsel for the appellant, the learned counsel for the defacto complainant, and the learned Public Prosecutor.

4. The precise allegation of the prosecution, as could be read out from the FIS given by the defacto complainant before the Police, is that, on 30.08.2022, at about 10.00 am, when the defacto complainant herein reached Valappad Service Co-operative Bank, Beach Road Branch, Kothakulam to remit the interest towards the gold loan availed by him, the accused herein, who does not belong to the Scheduled Castes or the Scheduled Tribes community and an employee of the Bank, called the caste name of the defacto complainant, who belongs to the Scheduled Castes community, and thereby abused him by calling his caste name within the public view. This is the base on which the prosecution alleges the commission of offence under Section 3(1)(s) of the SC/ST (POA) Act by the appellant.

5. While challenging the order of the Special Judge, disallowing pre-arrest bail, the learned counsel for the appellant argued at length to convince this Court regarding filing of sexual harassment complaint by the accused against one V.R.Babu, who is the Secretary of the Valappad Co-operative Bank, which led to registration of crime No.350/2022, alleging that the above said V.R.Babu committed offences under Section 354A(1)(i) and 354A(1) and (2) of IPC. Annexure II is the copy of FIR and Annexure I is the copy of FIS dated 14.05.2022 in the above crime. It is submitted by the learned counsel for the appellant that in the said crime, offence under Section 376(C)a also was subsequently incorporated. It is argued by the learned counsel for the appellant further that since V.R.Babu continuously demanded sexual favour from the appellant herein and he made so many attempts in this regard, the appellant herein was forced to lodge complaint

as Annexure II, which led to the registration of Annexure I FIR. It was thereafter, the Secretary of the Bank, who is having control over the entire affairs of the Bank with the assistance and connivance of the other employees, repeatedly compelling the appellant to withdraw the case and the present case is one foisted with an ulterior motives to achieve the said goal. He had read out the complaint filed by the accused before the Secretary as well as the Police, which are produced as Annexure VIII and Annexure IX on the date of alleged occurrence of this crime itself positing these facts.

6. The learned counsel for the appellant also submitted that as per Annexure III, the Local Complaints Committee, Thrissur, on the application of the appellant with regard to the incident narrated in Annexure II FIS, conducted enquiry and finally recommended removal of V.R.Babu from the post of Secretary till the culmination of the criminal case.

Further, it was found by the Committee that the Secretary treated the appellant cruelly, mentally and in connection with her employment. Further, the Secretary made serious false and unwarranted allegations of financial scams against the appellant. He also pointed out that the defacto complainant herein is none other than the husband of Smt.Remadevi, an employee of the said Society and the same would go to show the falsity of the present complaint.

7. Whereas, the learned counsel for the defacto complainant confined his argument to the allegation in the FIS. He urged that the allegation in the FIS would constitute, *prima facie*, abuse against the defacto complainant by calling his caste name within public view and thereby an offence punishable under Section 3(1)(s) of the SC/ST (POA) Act. According to the learned counsel for the defacto complainant, in a case involving offence/offences under the SC/ST (POA) Act, when there is *prima facie* case, the

statutory bar in granting anticipatory bail under Section 18 and 18A of the SC/ST (POA) Act would apply. But he did not go into the previous incidents narrated by the learned counsel for the appellant. He also not denied the stature of the defacto complainant as the husband of Smt.Remadevi, an employee of the Bank.

8. The learned counsel for the defacto complainant also argued that as far as Annexure III report is concerned, V.R.Babu had filed a writ petition before this Court and as per the judgment in the writ petition, after setting aside the report, another internal committee was directed to enquire into the complaint.

9. The learned Public Prosecutor also supported the order of the Special Judge pointing out the fact that the allegations in the FIS would make a *prima facie* case.

10. Although there is bar under Section 18 and 18A of the SC/ST (POA) Act to grant anticipatory bail, it has been

settled by the Apex Court in the decision reported in **(2020(1) KLT 810 SC : 2020(2) KHC 423 : (2020) 4 SCC 727) Prathvi Raj Chauhan v. Union of India (UOI) and Ors** that even after incorporation of S.18A of the SC/ST (POA) Act, in cases where there is no *prima facie* case, grant of anticipatory bail is not specifically barred. It is the settled law that when there is *prima facie* case, grant of anticipatory bail is specifically barred.

11. Before analysing the question as to whether, a *prima facie* case is made out in this matter, it is necessary to address the tendency of false implication of innocent persons, who do not belong to Scheduled Caste or Scheduled Tribe community, by misusing the provisions of the SC/ST (POA) Act. There is no quarrel that stringent provisions are incorporated in the SC/ST (POA) Act to arrest the menace of atrocities against members of the Scheduled Caste and Scheduled Tribes community by exploiting their

backwardness. Since the Parliament found that the provisions of earlier SC/ST (POA) Act were not sufficient to meet the ends of justice, the Act was amended. After the amendment of the SC/ST (POA) Act, more stringent provisions have been incorporated in SC/ST (POA) Act with mandatory right of hearing to the defacto complainant at every stages of the court proceedings, as provided under Section 15A(3) of the SCT/ST (POA) Act. Thus, atrocities against Scheduled Caste or Scheduled Tribe community, in fact, is intended to be curtailed by the stringent provisions of SC/ST (POA) Act. Therefore, when genuine complaint/complaints at the instance of the Schedule Caste or Scheduled Tribe members, which would attract offence/offences incorporated under the SC/ST (POA) Act, if made, the same shall be viewed seriously and appropriate legal action shall go on, to attend the grievances of the complaint/complaints. At the same time, the courts should

have a duty to rule out the possibilities of false implication of innocent persons as accused, with a view to achieve ulterior motives of the complaints, with threat of arrest and detention of the accused in custody, because of the stringent provisions in the SC/ST (POA) Act in the matter of grant of anticipatory bail. It is shocking, rather a mind blowing fact that many innocent persons are victims of false implication under the SC/ST (POA) Act. Therefore, it is the need of the hour for the courts to segregate the grain from the chaff by analysing the genesis of the case, the antecedents prior to registration of the crime, with reference to existence of animosity between the complainant and the accused, with particular attention, vis-a-vis previous disputes/cases/complaints, etc. while considering the question of *prima facie* case, when considering plea for pre-arrest bail. In cases, where there are materials to show that the accused and the complainant are in inimical terms, and there are

previous litigation between them or their men or representatives and in retaliation or as a sequel to the same, the allegations in the complaint constituting offence/offences under the SC/ST (POA) Act are made, the same may be the reasons to doubt the case *prima facie*. The instances are not exhaustive. Therefore, evaluation of the above facts would help the court while addressing the question of *prima facie* case, at the pre-arrest bail stage. On evaluation of the genesis of the case within the ambit of the above *pari materia*, if the court finds something to see the possibility of false implication, in such cases, the court could very well hold that *prima facie*, the prosecution allegations could not be believed for the purpose of denying anticipatory bail, after leaving the question as to commission of offence/offences for a detailed and fair investigation by the Investigating Officer. Indubitably, such a course of action is necessary to rule out the possibility of false implication.

12. Coming to the facts of the case, *prima facie*, it could be seen that the defacto complainant, in this case, is none other than the husband of Smt.Remadevi, an employee of the Co-operative Bank, wherein the appellant/accused also has been working. Against the Secretary of the Co-operative Bank, alleging sexual assault, the appellant filed a criminal case as Annexure I and II and the same are on investigation. Further, though Annexure III has been set aside by this Court, as submitted by the learned counsel for the defacto complainant (no such order placed before this Court) then also, there was direction as per the submission of the learned counsel for the defacto complainant to have an internal enquiry in this regard. Thus, it appears that the present crime was registered during the currency of the 'internal inquiry' at the instance of the husband of an employee of the Bank. It is to be noted that appellant herein is a person, who lodged complaint against

the Secretary of the Bank, raising serious allegations of sexual harassment. Further, she also made many complaints in this regard to various authorities as could be discernible from Annexure IV to Annexure XII. In such a case, the contention raised by the appellant to the effect that, the present complaint at the instance of the husband of an employee of the Bank is with intention to falsely implicate the appellant in serious offence under the SC/ST (POA) Act could not be ruled out. In such a case, the case advanced by the defacto complainant is *prima facie* doubtful. However, investigation can go on in a fair manner to unearth the truth of the allegations and I leave the same to the domain of Investigating Officer, in tact and the observations made in this judgment are confined, for the purpose of considering pre-arrest bail plea.

13. In view of the foregoing decisions, I am of the view that the order impugned is liable to be set aside and

pre-arrest bail is liable to be granted to the appellant on conditions.

In the result, the order impugned stands set aside and the appeal stands allowed. The appellant is granted pre-arrest bail on the following conditions:

1. The appellant/accused shall surrender before the Investigating Officer within ten days from today and on such surrender, the Investigating Officer can question the accused/appellant. In the event of her arrest, the Investigating Officer shall produce the accused/appellant before the Special Court on the date of surrender itself.
2. On such production, Special Court shall release the appellant/accused on bail, on executing bond for Rs.30,000/- (Rupees Thirty thousand) each, by himself and by two sureties, each for the like sum to the satisfaction of the Special Judge.
3. The appellant/accused shall co-operate with investigation and shall be made available for interrogation and for the purpose of

investigation, as and when the Investigating Officer is directs so.

4. The appellant / accused, shall not, intimidate the witnesses or interfere with the investigation in any manner.

Sd/-

A. BADHARUDEEN

JUDGE

APPENDIX OF CRL.A 1157/2022

PETITIONER ANNEXURES

- ANNEXURE I** A TRUE COPY OF THE FIR ALONG WITH FIRST INFORMATION STATEMENT IN CRIME NO.596/2022, REGISTERED BY VALAPAD POLICE STATION, DATED 30.08.2022
- ANNEXURE II** A TRUE COPY OF THE FIR IN CRIME NO.350/2022 OF VALAPAD POLICE STATION DATED 14.05.2022
- ANNEXURE III** A TRUE COPY OF THE ORDER PASSED BY LOCAL COMPLAINTS COMMITTEE, DISTRICT WOMEN AND CHILD DEVELOPMENT OFFICE, THRISSUR, DATED 11.07.2022
- ANNEXURE IV** A TRUE COPY OF THE COMPLAINT SUBMITTED BEFORE VANITHA COMMISSION
- ANNEXURE V** A TRUE COPY OF THE COMPLAINT FILED BEFORE THE CYBER POLICE STATION, THRISSUR, DATED 15.08.2022
- ANNEXURE VI** A TRUE COPY OF THE RECEIPT DATED 16.08.2022 OF CYBER POLICE STATION, THRISSUR RURAL.
- ANNEXURE VII** A TRUE COPY OF THE COMPLAINT FILED BEFORE VALAPAD POLICE STATION, DATED 15.08.2022
- ANNEXURE VIII** A TRUE COPY OF THE COMPLAINT DATED 30.08.2022 TO THE BANK MANAGER
- ANNEXURE IX** A TRUE COPY OF THE RECEIPT OF THE COMPLAINT FILED BEFORE VALAPAD POLICE STATION ON 30.08.2022
- ANNEXURE X** A TRUE COPY OF THE COMPLAINT BEFORE THE DEPUTY SUPERINDENT OF POLICE, KODUNGALLOOR DATED 31.08.2022
- ANNEXURE XI** A TRUE COPY OF THE COMPLAINT DATED 31.08.2022 TO DISTRICT COLLECTOR AND WOMEN AND CHILD DEVELOPMENT OFFICER, THRISSUR
- ANNEXURE XII** A TRUE COPY OF COMPLAINT PRODUCED BEFORE THE PRESIDENT OF THE VALAPAD SERVICE CO-OPERATIVE BANK DATED 17.09.2022.