



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF AUGUST, 2020

BEFORE

THE HON'BLE MR. JUSTICE K. NATARAJAN

CRIMINAL PETITION NO.3055 OF 2020

BETWEEN:

1. JAGADEESH
S/O. LATE ESWARAPPA,
AGED ABOUT 55 YEARS,
AGRICULTURIST.
2. VINAY KUMAR
S/O. LATE ESWARAPPA,
AGED ABOUT 44 YEARS.

BOTH ARE RESIDENTS OF
BHEEMASAMUDRA VILLAGE,
CHITRADURGA TALUK & DISTRICT-577 520.

... PETITIONERS

(BY SRI PRAKASH B.N., ADV., FOR M/S. LAWYERS INC.)

AND:

1. STATE OF KARNATAKA
BY CHITRADURGA RURAL P.S.,
CHITRADURGA-577 501,
REPRESENTED BY SPP,
HIGH COURT BUILDING,
DR. AMBEDKAR VEEDI,
BENGALURU-560 001.

2. MANJANAIAK
S/O. LATE DASYANAIAK,
AGED ABOUT 29 YEARS,
RESIDENT OF TUREBAILU,
BHEEMASAMUDRA,
CHITRADURGA TALUK & DISTRICT.

... RESPONDENTS

(BY SRI V.M. SHEELAVANT, S.P.P., FOR R-1 &
SRI PAVAN KUMAR G., ADV., FOR R-2)

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THIS CRIMINAL PETITION IS FILED UNDER SECTION 438 OF THE CR.P.C. PRAYING TO ENLARGE THE PETITIONERS ON BAIL IN THE EVENT OF THEIR ARREST IN CRIME NO.145 OF 2020 REGISTERED BY CHITRADURGA RURAL POLICE STATION, CHITRADURGA, FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 307, 323, 324, 354(B), 504 AND 506 READ WITH SECTION 34 OF THE IPC AND SECTIONS 3(1)(r)(s), 3(1)(w)(i)(ii) AND 3(2)(v) OF THE SC/ST (POA) ACT.

THIS CRIMINAL PETITION BEING RESERVED FOR ORDERS ON 30-7-2020 AND COMING ON FOR PRONOUNCEMENT THROUGH VIDEO CONFERENCING, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

The petitioners, who are accused Nos.1 and 2, have filed this petition under Section 438 of the Code of Criminal Procedure (for short, 'the Cr.P.C.') for granting anticipatory bail in Crime No.145 of 2020 registered by Chitradurga Rural Police Station for the offences punishable under Sections 307, 323, 324, 354(B), 504 and 506 read with Section 34 of the Indian Penal Code (for short, 'the IPC') and Sections 3(1)(r)(s), 3(1)(w)(i)(ii) and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 [for short, 'the SC/ST (POA) Act'].

2. Heard the learned counsel appearing for the petitioners, the learned State Public Prosecutor appearing for respondent No.1-State and the learned counsel appearing for the complainant-respondent No.2.

3. The petitioners have contended that they are innocent of the alleged offences and a false complaint is made by the complainant with an intention to give a criminal colour to a civil dispute. A land bearing survey No.12/5p1 of Bedarubommenahalli Village, Chitradurga, was fallen to the share of Chandranaik, who is the grandfather of the complainant, under panchayat parikath dated 19-11-1984. Thereafter, the said Chandranaik and his children have sold the land measuring 2 acres 10 guntas to one Shivanandamurthy, brother-in-law of the petitioners, in the year 2004 under registered sale deed and the revenue entries have been made in the name of Shivanandamurthy. Children of Chandranaik have filed collusive partition suit in O.S. No.481 of 2011 and obtained decree in the year 2012. That on 8-5-2020, when the petitioners were working in the said land, the complainant came near the land along with goondas and

assaulted them. Hence, a criminal case has been registered against the complainant in Crime No.149 of 2020. On the basis of a false complaint lodged by the complainant-respondent No.2, the Police have registered a case against the petitioners for the offences punishable under the IPC and the SC/ST (POA) Act. Based upon the complaint, the Police are making efforts to arrest the petitioners. Hence, they moved bail petition under Section 438 of the Cr.P.C. before the Additional District and Sessions Judge, Chitradurga, in Crl. Misc. No.54 of 2020 which came to be rejected on 12-6-2020. Hence, the petitioners filed this petition.

4. After issuance of notice, the complainant himself appeared and impleaded as respondent No.2 by filing Interlocutory Application No.1 of 2020 and filed objections contending that there is a *prima-facie* case made out against the petitioners for having committed the offences

under the IPC and the SC/ST (POA) Act. In view of the amendment to the Act by insertion of Section 14A and Sections 18 and 18A of the SC/ST (POA) Act, there is clear bar for granting anticipatory bail. If the bail application is rejected by the Special Court, the petitioners are required to file an appeal under Section 14A(2) of the SC/ST (POA) Act and there is a bar under Section 18 and 18A of the SC/ST (POA) Act for granting anticipatory bail under Section 438 of the Cr.P.C. He further stated that, the complainant has obtained decree in his favour by filing an Original Suit and in spite of that, the petitioners and his henchmen came and abused the complainant by taking the name of his caste in presence of the relatives of the petitioners as well as the complainant and also made an attempt to murder Poryanaik, thereby a *prima-facie* case is made out by the complainant in his complaint to attract the provisions of the SC/ST (POA) Act. Therefore, the

petition under Section 438 of the Cr.P.C. is not maintainable. Hence, he prayed for dismissal of the petition.

5. Learned counsel for the petitioners has contended that there is no *prima-facie* case made out in the complaint in order to show that the petitioners have committed any offence under the SC/ST (POA) Act. There is no abuse or insult or intimidation by the petitioners, they have never taken the name of the caste of the complainant and it must be in the public view, but the averments do not make out any ingredients to attract the any of the offence under the SC/ST (POA) Act. The petitioners are law abiding citizens and they are ready to abide any condition. The learned counsel further contended that as per the judgment of the Hon'ble Supreme Court in the case of **DR. SUBHASH KASHINATH MAHAJAN v. STATE OF MAHARASHTRA AND ANOTHER**

reported in **(2018) 6 SCC 454** has clearly laid down the law for seeking anticipatory bail and when there is no *prima-facie* case made out, the bar under Section 18 of the Act would not attract. Hence, he prayed for granting bail. Further, in support of his arguments, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in the case **ASMATHUNNISA v. STATE OF ANDHRA PRADESH AND ANOTHER** reported in **(2011) 11 SCC 259** and the order passed by a Co-ordinate Bench of this Court in Criminal Petition No.2433 of 2020 dated 10-6-2020.

6. Per contra, the learned counsel for respondent No.2 has raised preliminary objection on the maintainability of bail petition under Section 438 of the Cr.P.C. and contended that the petitioners have committed the offences punishable under the IPC as well as under the SC/ST (POA) Act. They have insulted the

complainant by taking the name of his caste, abused him in filthy language in the presence of the relatives of the complainant and the petitioners, which clearly reveals that they have insulted the members of the SC/ST in place of public view. Therefore, there is clear bar under Section 18 of the SC/ST (POA) Act for granting bail under Section 438 of the Cr.P.C. The learned counsel further contended that once bail application is rejected, the petitioners should approach the High Court by filing an appeal under Section 14A(2) of the SC/ST (POA) Act. Hence, he prayed for rejection of the bail petition. In support of his arguments, he relied upon the following judgments of the Hon'ble Supreme Court;

- (i) **SWARAN SINGH AND OTHERS v. STATE**
[(2008) 8 SCC 435],
- (ii) **MANJU DEVI v. ONKARJIT SINGH**
AHLUWALIA ALIAS OMKARJEET SINGH AND
OTHERS [(2017) 13 SCC 439],

(iii) **ASHARFI v. STATE OF UTTAR PRADESH**
[(2018) 1 SCC 742] and

(iv) **PRATHVI RAJ CHAUHAN v. UNION OF INDIA**
AND OTHERS [2020 SCC OnLine SC 159].

7. The learned State Public Prosecutor appearing for respondent No.1-State has contended that there is *prima-facie* case made out against the petitioners for having committed the offences punishable under the SC/ST (POA) Act. Therefore, there is clear bar for granting anticipatory bail. He further contended that the Hon'ble Supreme Court in the case **PRATHVI RAJ CHAUHAN v. UNION OF INDIA AND OTHERS** reported in **2020 SCC OnLine SC 159** has held that when there is no *prima-facie* case made out, there is no legal bar for granting anticipatory bail under Section 438 of the Cr.P.C. Therefore, he prayed for dismissing the petition.

8. Upon hearing the arguments of the learned counsel for the respective parties, the point that arises for my consideration is;

Whether the anticipatory bail petition under Section 438 of the Cr.P.C. is not maintainable in view of the bar under Sections 18 and 18A and Section 14A of the SC/ST (POA) Act?

9. Before discussing the present case on hand, it is worth to mention the principles laid down by the Hon'ble Supreme Court in the case of **Prathvi Raj Chauhan** (supra) in respect of maintainability of the petition under Section 438 of the Cr.P.C. while considering the offences which falls under the SC/ST (POA) Act. In the said case, the Hon'ble Supreme Court has considered its previous judgment passed in the case of **Dr. Subhash Kashinath Mahajan (I Part)** (supra) and various other cases held as under:

“9. The section 18A(i) was inserted owing to the decision of this Court in Dr. Subhash Kashinath (supra), which made it necessary to obtain the approval of the appointing authority concerning a public servant and the SSP in the case of arrest of accused persons. This Court has also recalled that direction on Review Petition (Crl.) No.228 of 2018 decided on 1.10.2019. Thus, the provisions which have been made in section 18A are rendered of academic use as they were enacted to take care of mandate issued in Dr. Subhash Kashinath (supra) which no more prevails. The provisions were already in section 18 of the Act with respect to anticipatory bail.

10. Concerning the applicability of provisions of section 438 Cr.P.C, it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by section 18

and 18A (i) shall not apply. We have clarified this aspect while deciding the review petitions.”

The Hon'ble Supreme Court has clearly held that the bar created under Sections 18 and 18A of the SC/ST (POA) Act shall not apply when the complaint does not make out a *prima-facie* case for applicability of the provisions of the SC/ST (POA) Act. By keeping the principles laid down by the Hon'ble Supreme Court in the mind and by coming to the averments made in the complaint by respondent No.2, where it is alleged that on 8-5-2020 at about 9:00 a.m., when the complainant, his aunt Rathna Bai and father Chandranaik were working in the land, petitioner No.1-Jagadeesh and petitioner No.2-Vinay Kumar came in the Bolero jeep, bearing registration No.KA-16 M-5088, and abused the complainant in filthy language by taking the name of the caste as 'sukali' and

'lambani'. Further, when the complainant said that, a civil Court has passed decree in their favour, at that time, the petitioners have abused and said that, no Court can do anything to them. When Rathna Bai and Poryanaik came for rescuing the complainant, at that time, petitioner No.2 said to have dragged Rathna Bai by holding her clothes and petitioner No.1 with an intention to do away the life has run over the Bolero jeep on Poryanaik. Due to hit by Bolero jeep, Poryanaik sustained injuries and he was shifted to the hospital. It is further alleged that the petitioners threatened to do away their life and went back. After receiving the complaint, the Police have registered a case in Crime No.145 of 2020 for the offences punishable under Sections 307, 323, 324, 354(B), 504 and 506 read with Section 34 of the IPC and Sections 3(1)(r)(s), 3(1)(w)(i)(ii) and 3(2)(v) of the SC/ST (POA) Act.

10. On bare reading of the complaint, it goes to show that there is a civil dispute pending between the petitioners and the complainant. The complainant has obtained decree in his favour in O.S. No.481 of 2011 in respect of the survey No.12/14. Wherein, the petitioners are claiming the same property measuring 2 acres 10 guntas said to have been purchased by one Shivanandamurthy, brother-in-law of the petitioners, under registered sale deed dated 14-6-2004 as the said property fallen to the share of Chandranaik. The petitioners have stated that they have also filed a counter complaint against respondent No.2-complainant and others which is registered in Crime No.149 of 2020 for the offences punishable under Sections 143, 147, 148, 307, 323, 324, 504 and 506 read with Section 149 of the IPC. On perusal of the complaint and counter complaint filed by the petitioners, the alleged incident occurred on

8-5-2020 at 9:00 a.m. is admitted fact. As per the complaint of the petitioners, they have stated that respondent No.2-complainant and others belonging to same Village, who belongs to *lambani* community people came and assaulted them. The very complaint filed by petitioner No.1 before the Police in Crime No.149 of 2020 goes to show that respondent No.2-Manjanaik and other persons belonging to *lambani* community came and picked up quarrel with them. In the complaint filed respondent No.2, it is stated that the petitioners have taken the name of the caste '*sukali*' and '*lambani*' and abused the complainant with filthy language. It is also alleged that petitioner No.1 drove the Bolero jeep and dashed against Poryanaik and caused injuries, which attracts Section 307 of the IPC, which is punishable with ten years and up to life imprisonment. Therefore, the offence under Section 3(2)(v) of the SC/ST (POA) Act attracts.

11. As regards to the arguments of the learned counsel for the petitioners that incident took place in a private land, it is not public place and public view in order to attract the provisions under the SC/ST (POA) Act. In this regard, learned counsel for respondent No.2 has relied upon the judgment of the Hon'ble Supreme Court in the case of **Swaran Singh** (supra), wherein it has clarified what is public place and within the public view as under:

28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by appellants 2 and 3 (by calling him a 'Chamar') when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the

building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression 'place within public view' with the expression 'public place'. A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies."

In view of the principles laid down in the above said case, the offence committed outside the house and in a lawn abducting to the road or outside the boundary wall would certainly be a place within a public view and even if

the remark is made inside a building, but some members of the public are there (not merely relatives or friends), then also it would be an offence since it is in the public view. Therefore, the arguments addressed by the learned counsel for the petitioners that the offences under the Act would not attract, as the offences are committed in a private land and it is not a public place within the meaning of public view cannot be acceptable. On the other hand, the alleged offences on 8-5-2020 have been committed in the land in the presence of the relatives of the complainant as well as the petitioners as per their own F.I.R. in Crime No.149 of 2020. Such being the case, the petitioners have abused the complainant by taking the name of the caste as '*sukali*' and '*lambani*' and threatened to do away with the life in order to put an end to the litigation. Petitioner No.1 is alleged to have driven the Bolero jeep and dashed against Poryanaik and caused

injuries and petitioner No.2 dragged Rathna Bai by holding her clothes, which clearly goes to show a *prima-facie* case made out in the complaint in order to attract Sections 3(1)(r)(s) and 3(1)(w)(i)(ii) of the SC/ST (POA) Act. The offence under Section 307 of the IPC is punishable with ten years and up to life imprisonment. Therefore, Section 3(2)(v) of the SC/ST (POA) Act also attracts. Once *prima-facie* case is made out in the complaint or in F.I.R., then there is clear bar under Section 18 of the SC/ST (POA) Act for granting anticipatory bail under Section 438 of the Cr.P.C.

12. Learned counsel for the petitioners has relied upon the order passed by a Co-ordinate Bench of this Court in Criminal Petition No.2433 of 2020 dated 10-6-2020. In the said case, the learned Judge has considered the fact of that case, wherein the alleged offence was committed at 23:45 hours on 14-5-2020

during the dark hours of the midnight and at the time of COVID-19 lockdown and no other persons were present and it has held that, the offences are under Sections 323 and 506 of the IPC. Therefore, the offence under Section 3(2)(v) of the SC/ST (POA) Act will not attract. Hence, anticipatory bail was granted. However in this case, the occurrence of the alleged incident has been admitted by both the parties in the complaint and counter complaint. Due to pending civil dispute, the petitioners have abused the complainant with filthy language by taking the name of the caste of the complainant. *Prima-facie* averments made in the complaint attract the provisions under the SC/ST (POA) Act. Therefore, the anticipatory bail under Section 438 of the Cr.P.C. is not maintainable in view of the bar under Section 18 of the SC/ST (POA) Act.

13. The next question that arises is that, once *prima-facie* case is made out in the complaint and the

provisions of the SC/ST (POA) Act is attracted, the anticipatory bail is not maintainable and then, the remedy is available to the accused to file an appeal under Section 14A(2) of the SC/ST (POA) Act. For convenience, the amended Section 14A to Section 14 of the SC/ST (POA) Act which came into effect from 26-1-2016, reads as follows:

14A. 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
(underlined by me).

(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.”

On bare reading of Section 14A(2) of the SC/ST (POA) Act, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail. The Additional Sessions Court, Chitradurga, which is a Special Court for trying the SC/ST (POA) Act, has dismissed the bail petition on 12-6-2020 holding that there is *prima-facie* material to attract the provisions of the SC/ST (POA) Act and there is clear bar for entertaining the anticipatory bail application under Section 18 of the SC/ST (POA) Act. Therefore, the remedy available to the petitioners is to file an appeal under Section 14A(2) of the SC/ST (POA) Act and not the petition under Section 438 of the Cr.P.C.

14. In the case of **Manju Devi** supra, the Hon'ble Supreme Court has set aside the anticipatory bail granted by the High Court and directed the accused to surrender before the appropriate Court and seek for regular bail.

15. In the case of **Asharfi** supra, the Hon'ble Supreme Court has held the amended provisions Section 3(2)(v) of the SC/ST (POA) Act is applicable only in the prospective nature after the commencement of the amended Act in the year 2016.

16. Learned counsel for respondent No.2 has brought to the notice of this Court that in a similar circumstance, the Single Bench of Gujarat High Court in R/Criminal Misc. Application No.6219 of 2018 considered Section 14A(2) of the SC/ST (POA) Act and by relying upon the Division Bench judgment of the Patna High Court in **BISHESHWAR MISHRA AND OTHERS v. HANUMAN**

MISHRA AND OTHERS (Criminal Misc. Application No.25276 of 2016 decided on 27-10-2016) has held that for grant or refusal of any bail either anticipatory or regular bail by the Special Court, the appeal would lie to the High Court under Section 14A(2) of the Act. I am in with respectful agreement in the view taken by the Gujarat High Court and Division Bench of the Patna High Court that once *prima-facie* case is made out for attracting the Sections of the SC/ST (POA) Act, the provisions of Section 438 of the Cr.P.C. is not maintainable in view of the bar under Section 18 of the SC/ST (POA) Act. The only remedy available to the petitioners-accused is to file an appeal under section 14A(2) of the SC/ST (POA) Act to the High Court and not under Section 438 of the Cr.P.C. The Hon'ble Supreme Court in the case of **Prathvi Raj Chauhan** supra has clearly upheld the provisions of Sections 18 and 18A of the SC/ST (POA) Act and laid

down the law regarding maintainability of Section 438 of the Cr.P.C. only if no *prima-facie* case is made out under the provisions of the SC/ST (POA) Act. Therefore, the only remedy available to the petitioners is that, they are required to surrender before the Special Court and seek bail. In case, if the bail is rejected, the petitioners shall approach the High Court by filing an appeal. Even if bail is granted, the remedy available to the complainant for cancellation of said bail, he has to file an appeal before the High Court under Section 14A(2) of the SC/ST (POA) Act.

17. Therefore, by looking to the fact and circumstances of the case and dispute between the petitioners and the complainant, there is *prima-facie* case made out against the petitioners for having committed the offences under the SC/ST (POA) Act. Hence, the bail petition under Section 438 of the Cr.P.C. is not maintainable and the same is liable to be dismissed.

Accordingly, the petition is ***dismissed***.

**Sd/-
JUDGE**

kvk