

(2024) 04 KL CK 0039**High Court Of Kerala****Case No:** Criminal Appeal No.630 Of 2024

Praveen Kumar

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision: April 3, 2024**Acts Referred:**

- Code of Criminal Procedure, 1973 - Section 438
- Indian Penal Code, 1860 - Section 143, 147, 149, 294(b), 323, 324, 326, 341, 342, 447
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(2)(va), 14A, 15A(3), 18, 18A

Hon'ble Judges: K.Babu, J**Bench:** Single Bench**Advocate:** M.R.Nandakumar, Mayika Sundar, Arjun Anil, Anna Maria, Anoop.V. Nair, Rohith C, G.Sudheer**Final Decision:** Allowed**Judgement**

K.Babu, J

1. This is an appeal filed under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The challenge in this appeal is to the order dated 26.03.2024 in Crl.M.P No.1159/2024 passed by the Court of the Special Judge for the trial of the offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, (Sessions Judge), Alappuzha.

2. The appellants are accused Nos.1 and 2 in Crime No.1016/2023 of Poochakkal Police Station. The appellants and the other accused are alleged to have committed the offences punishable under Sections 143, 147, 447, 341, 323, 324, 294(b), 342 and 326 read with Section 149 of IPC and Section 3(2)(va) of the Scheduled Castes and the

Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act').

The prosecution case:

3. On 21.12.2023 at 10.00 p.m, the accused Nos.1 to 6 formed themselves into an unlawful assembly and in prosecution of the common object of the said assembly, accused Nos.1 and 2 (appellants) trespassed into the courtyard of the family house of the defacto complainant. Appellant No.1 abused the defacto complainant and his brother-in-law in filthy language. When the defacto complainant questioned the same, appellant No.1 beat him with a stick and fisted on his face, causing injury to his upper lip. Appellant No.1 again beat and threatened him. When the brother-in-law of the defacto complainant who belongs to the scheduled caste community attempted to prevent appellant No.1, he stamped down him and beat forcefully on his left leg with a stick. Appellant No.2 then stamped on various parts of his body.

4. The party respondents/victims entered appearance through a counsel.

5. Heard the learned counsel for the appellants, learned counsel appearing for the victims and the learned Public Prosecutor.

6. The learned counsel for the appellants submitted that the prosecution failed to produce the materials to prima facie establish the ingredients of the offence under SC/ST Act. It is further submitted that the parties are living in inimical terms. The learned counsel for the appellants submitted that on the alleged date of occurrence the defacto complainant and his daughter along with Sumesh attacked the appellants. Poochakkal Police registered Crime No.1017/2023 against them. Prior to the registration of this crime, Poochakkal Police had registered Crime No.368/2023 against the defacto complainant alleging that he abused the daughter of appellant No.2. It is submitted that the present crime has been registered as a counterblast to the incident, which led to the registration of Crime Nos.1017/2023 and 368/2023.

7. I have gone through the FIS and the related documents. Respondent No.6, the victim who belongs to the scheduled caste community has no case that the appellants committed the above acts on account of him belonging to the SC/ST community.

8. The learned counsel for the appellants submitted that the appellants had no knowledge that respondent No.6 belongs to the scheduled caste community. The prosecution has no case that the appellants committed the alleged offences against respondent No.6. knowing that he belongs to the scheduled caste community.

9. In *Prathvi Raj Chauhan v. Union of India* [(2020) 4 SCC 727], the Supreme Court held that the bar created under Sections 18 and 18-A shall not apply if the complaint does not make out a prima facie case for the applicability of the provisions of the Act.

10. In *Subhash Kashinath Mahajan (Dr.) v. State of Maharashtra and Another* 2018 (2) KHC 207, while dealing with the pre- amended Act, the Supreme Court held that there is no absolute bar against grant of anticipatory bail in cases under the Act if no *prima facie* case is made out or where on judicial scrutiny the complaint is found to be *prima facie mala fide*. This Court in *xxxx v. State of Kerala* 2022 KHC 1001, while considering the application of the bar under Sections 18 and 18-A of the Act held thus:

"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-avis previous disputes/cases/ complaints, etc. while considering the question of *prima facie* case, when considering plea for prearrest 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."

11. The FIS and the other relevant materials would show that the victims were living in inimical terms with the appellants. Therefore, I am of the considered view that the bar under Sections 18 and 18-A of the Act is not applicable to the facts of the case.

12. The specific case of the appellants is that the crime has been registered as a counterblast to the cases registered against one of the victims. From the submissions at the bar it is revealed that the parties are neighbours and they are living in inimical terms in connection with a pathway. The weapon allegedly used is stick.

13. While considering the scope of jurisdiction under Section 438 Cr.P.C., the Constitution Bench of the Apex Court in *Gurbaksh Singh Sibia & Ors. v. State of Punjab* [(1980) 2 SCC 565] held thus:

"31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by *mala fides*; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in *State v. Captain Jagjit Singh* [AIR 1962 SC 253 : (1962) 3 SCR 622 : (1962) 1 Cri LJ 216], which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount

consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail."

14. In *Siddharam Satlingappa Mhetre v. State of Maharashtra* [(2011) 1 SCC 694] the Apex Court held thus:-

"113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the B.A.Nos.5010 of 2021 & Connected cases 40 accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record."

(In *Sushila Aggarwal v. State (NCT of Delhi)* [(2020) 5 SCC 1]) the declaration of law in *Siddharam Satlingappa Mhetre* that no condition can be imposed while granting order of anticipatory bail alone was overruled).

15. In *Sushila Aggarwal*, the Constitution Bench of the Apex Court, following the decision in *Gurbaksh Singh Sibia*, held that while considering an application (for grant of anticipatory bail) the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc.

Having considered the entire circumstances on the touchstone of the precedents mentioned above, I am of the view that the appellants are entitled to anticipatory bail. In the result,

(i) The Criminal Appeal is allowed.

(ii) The order dated 26.03.2024 dismissing Crl.M.P No.1159 of 2024 stands set aside.

(iii) The appellants shall appear before the Investigating Officer on 19.04.2024 between 10.00 AM and 11.00 AM for interrogation.

(iv) The Investigating Officer is directed to release the appellants on bail, in the event of their arrest, on their executing bond for Rs.1,00,000/- (Rupees One Lakh only) each with two solvent sureties each for the like sum.

(v) The appellants shall appear before the Investigating Officer on all Mondays between 10.00 AM and 11.00 AM for a period of three months.

(vi) The appellants shall not influence the witnesses in this case or tamper with the evidence.