(2014) 12 CAL CK 0095

Calcutta High Court

Case No: C.R.M. 16270 of 2014

Raja Mcgee		APPELLANT
	Vs	
The State of West Bengal		RESPONDENT

Date of Decision: Dec. 17, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 144, 438
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 18, 3(1), 3(1)(viii)

Citation: (2015) 3 CHN 291 : (2015) 3 Crimes 530

Hon'ble Judges: T. Sen, J; Indrajit Chatterjee, J

Bench: Division Bench

Advocate: Chama Mookherji, Anupam Mookherji and Sorojit Roy Chowdhury, Advocate for the Appellant; Subir Banerjee, Advocate for the Respondent

Judgement

Indrajit Chatterjee, J.
This is an application under Section 438 of the Code of Criminal Procedure, 1973 in which the present petitioner has prayed for his release on anticipatory bail in connection with Taltala P.S Case No. 214 dated 06.11.14 under Section 3(1)(viii) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 (herein after called as the said Act of 1989).

2. It is the case of the petitioner that this informant used to work as one supportive staff of Calcutta Boys School, Kolkata and was discharging his duties as a gardener since 2005 till his service was terminated after giving due notice, Charge-sheet and after observing necessary formalities with effect from 16th June, 2014.

3. It is also the case of the present petitioner that nowhere in the service book of the informant there is any entry that he belongs to such community and as such there is no

scope to attract Section 3(1)(viii) of the said Act of 1989. It has further been claimed by the petitioner that the departmental proceeding, the submission of charge-sheet and order of suspension were made just to take revenge on the informant he being a member of such community.

4. It may also be mentioned that the parties approached the writ jurisdiction of this Court and also filed Section 144 Cr.P.C. proceedings. One such writ petition being writ petition No. 257 of 2014 as filed by the present petitioner is still pending before this Court. It is also the case of the present petitioner that he is one honourable person being a Teacher and Principal of Calcutta Boys School and there is no chance of his absconsion or interfering with the investigating agency.

5. This prayer is opposed by the Learned Counsel appearing on behalf of the State and it is his submission that in view of the bar under Section 18 of the said Act of 1989 this Court cannot exercise its jurisdiction under Section 438 of the Code of Criminal Procedure, 1973 to grant anticipatory bail.

6. Learned Counsel who took us to Section 18 of the said Act of 1989 which runs thus:-"Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act".

7. Learned Counsel cited three decisions of our Hon''ble Court as delivered by two Hon''ble Single Judge as passed in CRR No. 2884 of 2005 (Laltu Mal @ Paka v. State of West Bengal), (which is one unreported decision), the decision of a third judge as reported in Parimal Maity Vs. State of West Bengal, and one Division Bench decision as reported in (2007) 1 C Cr LR(Cal) 465 (Khadem-e Dastegir & Anr. v. State).

8. He also referred to the decision of the Hon''ble Apex Court as reported in (2012)3 C. Cr. LR (SC) 491 (Vilas Pandurang Pawar & Anr. v. State of Maharashtra and Ors.). Before we enter into the merit of this application let us now take into consideration the decisions referred above.

9. In CRR No. 2884 of 2005 (Supra) no principle was laid down by the Hon''ble Single Judge to dispose of one anticipatory bail application under the said Act of 1989.

10. The decision of the Division Bench of our Hon''ble Court as reported in (2007)1 C. Cr. LR (Cal) 465 (Supra) has lost its force in view of the decision of the Hon''ble Apex Court as delivered in connection with Vilas Pandurang Pawar & Anr. (Supra).

11. Regarding the third decision Parimal Maity @ Parimal Maiti & Anr. (Supra) we are to say that the Hon''ble Third Judge followed in principle the decision of the Hon''ble Apex Court as passed in connection with Vilas Pandurang Pawar & Anr. (Supra). Be it noted that in the decision of the Division Bench it was held that Court has no jurisdiction to grant anticipatory bail in an application under Section 438 of the Cr.P.C. if Section 3(1) of the said Act of 1989 is clamped. Thus, the decision of the Apex Court is the touchstone how

such an application under Section 438 can be disposed of. we like to refer here Section 3(1)(viii) which runs thus:-"Punishments for offences of atrocities-(1) Whoever, not being a member of a Scheduled Caste or a Scheduled tribe..... (viii) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;.....shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine."

12. Let us now follow the decision of the Hon''ble Apex Court as delivered in Vilas Pandurang Pawar & Anr. (Supra) wherein the Apex Court held--"Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the Court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been prima facie made out. In other words, if there is a specific averment in the compliant, namely insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail."

13. It is true that the Hon''ble Apex Court further held in that decision that while considering the application for bail in such a case the scope for appreciation of evidence and other material on record is limited. The Hon''ble Apex Court further proceeded to say that the Court is not expected to indulge in critical analysis of the evidence on record. Thus, that is the parameter we are to concentrate on the FIR itself to say as to whether any prima facie case has been made out to attract Section 3(1)(viii) of the said Act of 1989.

14. We have gone through the F.I.R. giving rise to the present litigation. We have also taken into consideration the decisions of this Court as well as the decision of the Hon''ble Apex Court as referred to above. We have also taken into consideration the fact that the present petitioner was released on anticipatory bail as per order of this Court as passed in CRM No. 11851 of 2013 disposed of on 30.09.2013 in connection with Tal Tala P.S. Case No. 288 of 2013 and the present FIR was lodged on 6.11.2014 regarding the offence which took place "sometime before 8.8.2013 and onwards".

15. It is now not in dispute in view of the SC/ST certificate standing in the name of the present accused that he belongs to Rajbanshi Caste which is recognized either as Scheduled Caste or Scheduled Tribe community.

16. In the FIR the informant has expressed his wonder as to how the present petitioner was released on anticipatory bail in spite of the bar of the said Act of 1989.

17. On reading and re reading the FIR we failed to come across a single line that this informant was being harassed/has been harassed simply on caste ground not a single word was used in the FIR that he was castigated by the petitioner being a member of such community. Whether the suit or legal proceedings is malicious or not is to be decided at the stage of trial.

18. We have taken into consideration the entire facts and circumstances of this case and we are of the opinion that no prima facie case under Section 3(1)(viii) of the said Act of 1989 has been made out. Before we part with this judgment we must say that in the order of anticipatory bail as granted in the said CRM referred to above there is clear mention that the informant of that case did not produce any SC/ST certificate before that Court. We desist from looking into the 164 Cr.P.C. statements as made by the informant in view of the clear guideline of the Apex Court but we are told on our asking by the State Counsel that there was no such averment in it claiming the informant to be of such protected community.

19. Thus, in view of these observations, we are of the view that the accused petitioner is entitled to be released on anticipatory bail in the event of his arrest on furnishing a bail bond of Rs. 10,000 (ten thousand) with two sureties of like amount to the satisfaction of the Arresting Officer and also subject to the conditions as laid down in Sub-section (2) of section 438 of the Code of Criminal Procedure 1973.

20. A further condition is imposed on the petitioner that he will cooperate with the investigating agency in all respects.

21. The application for anticipatory bail stands allowed.

T. Sen, J.

I agree.