

(2018) 07 MP CK 0150

Madhya Pradesh High Court

Case No: Criminal Appeal No.4258 Of 2018

Radheshyam

APPELLANT

Vs

State Of Madhya
Pradesh And Another

RESPONDENT

Date of Decision: July 17, 2018

Acts Referred:

- Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 - Section 3(2)(va), 3(1)(w)(i), 14A
- Indian Penal Code, 1860 - Section 354, 354A, 456
- Protection of Children from Sexual Offences Act, 2012 - Section 7, 8

Hon'ble Judges: C.V. Sirpurkar, J

Bench: Single Bench

Advocate: A. D. Mishra, Aseem Dixit, S. Khampariya

Final Decision: Disposed Off

Judgement

Heard on this first appeal for anticipatory bail under section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989,

filed on behalf of appellant Radheshyam in Crime No.90/2018, registered by P.S. Umreth, District Chhindwara (M.P.), under Sections 456, 354 and

354-A of the I.P.C., Section 7/8 of POSCO Act, 2012 and sections 3(2) (va), 3(1) (w) (i) of the Scheduled Castes and Scheduled Tribes (Prevention

of Atrocities) Act, 1989.

This criminal appeal is directed against the order dated 1.06.2018 passed by the Court of Special Judge (Atrocities) SC/ST Act, Chhindwara, in Bail

Application No.1233/2018.

As per the prosecution case, the prosecutrix was a minor unmarried girl aged about 17 years. She belonged to a scheduled caste. At about 12:00 a.m.

on 28.5.2018 when she was sleeping at home, the appellant entered her house from behind and caught hold of her right hand. When the prosecutrix

tried to shout, he clamped her mouth shut and pressed her breasts and abdomen. He started to pull her cloths. When the prosecutrix raised alarm, her

neighbour Ritesh arrived and woke her mother Laxmi, who was sleeping in the adjacent room; whereon, the appellant ran away.

Learned counsel for the appellant submits that the appellant has been falsely implicated in the case. Anita, wife of appellant Radheshyam, is a Panch.

She and other Panchas had complained to the Chief Executive Officer of the Janpad Panchayat, Chhindwara against the Gram Panchayat Secretary,

who is cousin of the prosecutrix. As a result, he was suspended; therefore, the Panchayat Secretary has got to false report lodged against the present

appellant. In support of his contention, learned counsel for the appellant has filed certain documents. It has further been submitted that the incident as

alleged in the first information report appears to be highly improbable. It is improbable that hearing cries of the prosecutrix, her neighbour woke up but

her mother who was sleeping in the adjacent room, did not. Learned counsel for the appellant further submits that the spot map reveals that the place

of incident is surrounded on all sides by other houses. Nobody in his right mind, would select such a place for molesting a girl against her wishes

because he would be sure to be caught; therefore, inviting attention of the Court to the judgment rendered by the Supreme Court in the case of Dr.

Subhash Kashinath Mahajan vs. State of Maharashtra (Cr.A.No.416/2018 dated 20th March, 2018); it has been prayed that the appellant be granted

the benefit of anticipatory bail.

Learned Government Advocate for the respondent/State and learned counsel for the objector have vehemently opposed the application mainly on the

ground that cousin of the prosecutrix, who is said to have got this complaint lodged, has nothing to do with the prosecutrix. He is not her real brother.

At any rate, no unmarried girl would invite such indignity upon herself simply to avenge her cousin. Her neighbour woke up before her mother because

neighbour's house is also very near to the place where the prosecutrix was sleeping; therefore, it has been prayed that petition for anticipatory bail be dismissed.

The Supreme Court has held in the case of Dr. Subhash Kashinath Mahajan vs. State of Maharashtra (Cr.A.No.416/2018 dated 20th March, 2018),

as follows:

81. Accordingly, we direct that in absence of any other independent offence calling for arrest, in respect of offences under the Atrocities Act, no

arrest may be effected, if an accused person is a public servant, without written permission of the appointing authority and if such a person is not a

public servant, without written permission of the Senior Superintendent of Police of the District. Such permissions must be granted for recorded

reasons which must be served on the person to be arrested and to the concerned court. As and when a person arrested is produced before the

Magistrate, the Magistrate must apply his mind to the reasons recorded and further detention should be allowed only if the reasons recorded are found

to be valid. To avoid false implication, before FIR is registered, preliminary enquiry may be made whether the case falls in the parameters of the

Atrocities Act and is not frivolous or motivated.

Consideration of present case

82. As far as the present case is concerned, we find merit in the submissions of learned amicus that the proceedings against the appellant are liable to

be quashed.

Conclusions

83. Our conclusions are as follows:

i) Proceedings in the present case are clear abuse of process of court and are quashed.

ii) There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial

scrutiny the complaint is found to be prima facie mala fide. We approve the view taken and approach of the Gujarat High Court in Pankaj D Suthar

(supra) and Dr. N.T. Desai (supra) and clarify the judgments of this Court in Balothia (supra) and Manju Devi (supra); ii) In view of acknowledged

abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-

public servant after approval by the S.S.P. which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons

must be scrutinized by the Magistrate for permitting further detention.

iv) To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make

out a case under the Atrocities Act and that the allegations are not frivolous or motivated.

v) Any violation of direction (iii) and (iv) will be actionable by way of disciplinary action as well as contempt.

The above directions are prospective.

As such, the scope for grant of anticipatory bail has been considerably widened.

Therefore, in view of the submissions made by learned counsel for

the appellant, it would be appropriate to dispose of this appeal for anticipatory bail with following directions:

A preliminary enquiry shall be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that

the allegations are not frivolous or motivated.

The appellant shall not be arrested before approval by the S.S.P., which may be granted if deemed appropriate and necessary for reasons to be

recorded. Such reasons shall be scrutinized by the Magistrate for permitting further detention.

Accordingly, the appeal stands disposed of with aforesaid directions.