

HIGH COURT OF KERALA**Bench: The Honorable Mr. Justice P.G. Ajithkumar****Date of Decision: December 21, 2023****CRL.A NO. 1812 OF 2023**

1 **BIJU CHANDRAN,**
2 **RAJESH,**
3 **SURESH MITHRA**
4 **MUHAMMED ARSHAD**
5 **ANANTHU** **APPELLANTS**
VS
1 **STATE OF KERALA**
2 **THE STATION HOUSE OFFICER**
3 **RAJEEV** **RESPONDENTS**

Sections, Acts, Rules, and Article Mentioned in the Judgment:

Section 143, 147, 148, 294(b), 341, 323, 324, 308 of Indian Penal Code, 1860 (IPC)

Sections 3(1)(r), 3(1)(s), and 3(2)(va), 18 of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC/ST Act)

Subject:

Anticipatory Bail in Cases Involving Alleged Offenses under SC/ST Act and IPC Arising from a Public Protest

Headnotes:

Criminal Appeal – Anticipatory Bail – Denial of anticipatory bail by Special Court for the trial of SC/ST (POA) Act cases – Appellants accused of offenses under IPC and SC/ST Act – Allegations arising from a public protest – No prima facie case made out under SC/ST Act – Insufficient evidence to attract Section 308 IPC – Custodial interrogation not necessary – Appellants entitled to anticipatory bail subject to conditions. [Para 1-10]

Decision – Appeals allowed – Orders of the Special Court set aside – Appellants granted anticipatory bail on conditions – Bail conditions include not influencing witnesses or tampering with evidence, appearing before the investigating officer as required, and refraining from further offenses during the bail period – Prosecution has the option to seek bail cancellation for any breach of conditions. [Para 11]

Referred Cases:

- Prathvi Raj Chauhan vs. Union of India [(2020) 4 SCC 727]
- Haji Iqbal v State of UP and Others [AIR 2023 SC 3964]

Representing Advocates:

Advocates T. Asafali and Laliza T.Y. represented the appellants in Crl.A. 1812/2023.

Smt. Maya M.N., Public Prosecutor, represented the State and Respondents R1 & R2 in both Crl.A. 1700/2023 and Crl.A. 1812/2023.

P.G. AJITHKUMAR, J.

----- **Crl.Appeal Nos.1700 and
1812 of 2023**

----- **Dated this the 21st day of
December, 2023**

JUDGMENT

These appeals arose on the orders of the Special Court for the trial of offences under the SC/ST (POA) Act, Nedumangad dismissing applications for anticipatory bail. Accused Nos.2 and 3 in crime No.983 of 2023 are the appellants in Crl.Appeal No.1700 of 2023. Five persons, who apprehend arrest in the aforesaid crime, are the appellants in Crl.Appeal No.1812 of 2023.

2. Crime No.983 of 2023 of Neyyar Dam Police Station was registered with the allegation that at about 5.00 p.m. on 18.10.2023, the appellants and a few other persons, totalling around 30, picketed Kuttichal Grama Panchayat Office in protest of the decision of the Panchayat to shift Karthikeyan Memorial Model Residential School to Pankavu. In the melee during the

picketing, the accused had abused uttering caste name of the President of the Panchayat, who belongs to Scheduled Tribe. When the de facto complainant tried to intervene, he was manhandled by some among the assailants. Sri.Sajad Faizal, Sri.Aji and Sri.Arshad were the persons allegedly assaulted the de facto complainant. It was further alleged that Sri.Sajad Faizal using some weapon hit at the forehead of the de facto complainant. The crime was registered for the offences punishable under Section 143, 147, 148, 294(b), 341, 323, 324 and 308 read with Section 149 of the Indian Penal Code, 1860 (IPC) and under Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC/ST Act).

3. The applications for anticipatory bail filed by the appellants, namely, CrI.M.C.No.4 of 2023 and CrI.M.P.No.123 of 2023 were dismissed by the Special Court as per the impugned order, which are under challenge in the respective appeals.

4. Notice was given to the de facto complainant through the Station House Officer, Neyyar Dam Police Station. He did not choose to appear before the Court. Heard the learned counsel for the appellants and the learned Public Prosecutor. Perused the Case Diary.

5. The learned counsel for the appellants would submit that the incident had occurred in connection with a public agitation of shifting of a public school from the present location to another place. During the picketing there occurred some altercation and other than that there was no incident of manhandling or assault. But, with the ulterior motive of wreaking political vengeance, a false case was lodged. It is submitted that even accepting the allegations in the F.I.statement to be true, no offence under the SC/ST Act or an offence punishable under Section 308 of the IPC would be made out. The learned counsel urges that the court below did not consider the said aspects of the matter and entered a wrong finding that the bar under Section 18 of the SC/ST Act is attracted in the case.

6. The learned Public Prosecutor would submit that in the F.I.statement itself, the de facto complainant stated about uttering of caste name of the Panchayat President and the attack on the President as well as the de facto complainant, who is a Member of the Grama Panchayat and therefore the finding of the court below cannot be said to be faulty. When the assailants attacked the de facto complainant using a weapon and that caused him injury, the prosecution is justified in initiating the case for the offence

under Section 308 of the IPC also. Accordingly, the learned Public Prosecutor opposes grant of anticipatory bail to the appellants.

7. A Three judge bench of the Apex Court in **Prathvi Raj Chauhan vs. Union of India [(2020) 4 SCC 727]**, observed that if a prima facie case has not been made out attracting the provisions of SC/ST Act, the bar created by Section 18 to the grant of anticipatory bail is not attracted.

The Apex Court reiterated the said principle in **Haji Iqbal v State of UP and Others [AIR 2023 SC 3964]**. The Apex Court also explained how the prosecution case has to be approached when there is an allegation that the complaint was instituted with the ulterior motive of wreaking vengeance. It was held that if there is an allegation that the prosecution was launched with the ulterior motive of wreaking vengeance and proves manifestly frivolous or vexatious, the court owes a duty to look into the FIR with care and a little more closely.

8. In the F.I.statement it is alleged that touching the caste name of the Panchayat President, the assailants uttered that while he belonging to a particular community of Scheduled Tribe, shifting of the school, which is against the interest of the members of that community, would not be permitted. It is pointed out by the learned counsel for the appellants that two of the accused are also belonging to Scheduled Caste or Scheduled Tribe and that itself is enough to show that there was no racial discrimination and what transpired was only a public agitation. From the materials available on record, it is evident that the alleged assault and hurling of humiliating words occurred during the course of the picketing. From the F.I.statement itself, it is evident that the de facto complainant and others were resisting the picketing group and it was in that course the incident occurred. When the aforementioned words were said to have been uttered by the assailants in the above context, the same are in the nature of a statement in protest. It cannot, *prima facie*, be said that the said words amounted to an offence under Sections 3(1)(r) and 3(1)(s) of the SC/ST Act.

9. Coming to the offence under Section 308 of the IPC, its basis is the statement of the de facto complainant. His statement is that "സമയബനന്ധിതമമായന്ധി സഹപ്രവർത്തകരമായ മമമ്പർമമാർ എന്നെ ആശുപത്നധിയന്ധിൽ എത്തന്ധിചന്ധിലമായന്ധിരന്ധിന്ധു എന്ധിയിൽ അവർ എന്നെ മകമാലമപ്പെടുത്തുമായന്ധിരന്ധിന്ധു.". From the accident registercum-wound certificate of the Panchayat President and the de facto complainant available in the Case Diary would not show any serious

injury to any of them. The de facto complainant has an abrasion of the shoulder and contusion on the chest. The Panchayat President has complaints of pain in the chest and difficulty to breathe. The alleged assault are that they were fisted and punched by the members of the offending group. The further allegation is that Sri.Sajad Faizal hit at the forehead of the de facto complainant using some weapon. The identity of the weapon is not stated. From the said allegations, it is not able to find *prima facie* the commission of an offence under Section 308 of the IPC.

10. Considering the aforementioned aspects, I am of the view that this is case where the bar under Section 18 of the SC/ST Act cannot have application. It is also evident that the materials are insufficient to, *prima facie*, attract an offence under Section 308 of the IPC. In the nature of the offences alleged, custodial interrogation or the detention of the appellants during investigation are not absolutely necessary. Therefore, the appellants are entitled to get anticipatory bail, of course, subject to the conditions that would ensure a proper investigation in the matter.

11. Accordingly, these appeals are allowed. The order dated 07.11.2023 in CrI.M.C.No.4 of 2023 and the order dated 20.11.2023 in CrI.M.P.No.123 of 2023 of the Special Court, Nedumangad are set aside. In the event of the appellants being arrested, they shall be released on bail on their execution of bonds for Rs.50,000/- (Rupees fifty thousand only), with two solvent sureties for the like amount each, to the satisfaction of the investigating officer, and on the following conditions:

- (i) They shall not influence or intimidate witnesses or tamper with evidence;
- (ii) They shall appear before the investigating officer as and when called for; and
- (iii) During the bail period, they shall not get involved in any offence.

In case of breach of any of the bail conditions, the prosecution shall be at liberty to apply for cancellation of the bail before the jurisdictional court.

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