
(2006) 01 CHH CK 0035
In the Chhattisgarh High Court

Bhupendra Das Vaishnava and Another	APPELLANT
Vs	
State of Chhattisgarh	RESPONDENT

Date of Decision : 18-01-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 294, 323, 452, 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 18, 3

Citation : (2006) 3 CGLJ 88 : (2006) CriLJ 4346 : (2007) 5 RCR(Criminal) 148

Hon'ble Judges : Sunil Kumar Sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sunil Kumar Sinha, J.—This is an application filed u/s 438 of the Cr.P.C. for grant of anticipatory bail to the applicants, who apprehended their arrest in connection with Crime No. 389/2005 registered at Police Station Kawardha, District Kabirdham (C.G.) for the offence punishable Under Sections 452, 294, 323, 506 of the I.P.C. and Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short Special Act).

2. At the very outset, learned Counsel for the State, referring to the memo dated 6.12.2005, written by Superintendent of Police, District Kabirdham to the Deputy Superintendent of Police A.J.K. Kawardha, submitted that on the direction of the Superintendent of Police, which was made on the basis of an application given by the father of the complainant, the offence under the Special Act has been withdrawn by the prosecution and now, the case is registered only under the aforementioned sections of the I.P.C. and there is no case under the Special Act.

3. The case of the prosecution is that the complainant namely, Devesh Devdas, a young boy aged about 15 years is a student of Class X. He had some quarrel with the son of applicant of No. 1 prior to 24.10.2005. The allegations are that on account of this, the applicants entered into the house of the complainant at

about 20.30 hours on 24.10.2005 and thereafter, assaulted him.

4. Learned Counsel for the applicants submits that in fact, the applicants had gone to make enquiry as to why the complainant has assaulted the son of applicant No. 1. The allegations levelled against them are false and baseless. He further submits that these applicants have not committed any such act as has been alleged against them. He also submits that the action taken by the father of the complainant would show that nothing like the earlier report was done by the applicants and for this reason only; the offence under the Special Act has been withdrawn against them. Therefore, he prays for releasing the applicants on anticipatory bail.

5. On the other hand, learned State counsel opposes the bail application.

6. I have heard learned Counsel for the parties at length.

7. No doubt, It is the dominion of the State to register an offence under a particular section applying all its wisdom, but the fact remains that when the matter is placed before the Court of law for ascertaining about the prima facie case for the purpose of bail, the Court is always well within the jurisdiction to look into the material placed before it and to assess as to whether any particular offence is made out or not. Even if, the prosecution has not registered a case under a particular section and the material placed before the Court goes to show that a particular section other than the sections already mentioned by the prosecution is made out, the Court is to act on the substance of the material placed before it with a view to find out a prima facie case on the basis of such materials and not on the basis of the sections levelled by the prosecution. It is more so required when the legislature mandates a command about the jurisdiction of a Court of law and prohibits the entertainment of certain cases by the Court of law under the overriding provisions made in the Act, like Section 18 in the present Act.

8. The law in relation to entertaining the application u/s 438, Cr.P.C. in such offences is well settled. The point raised is no longer res Integra. It has been held that if the contents of the F.I.R. or the complaint disclose the commission of offence under the special Act, the Courts would not be justified in entering into a further enquiry by summoning the case diary or any other material as to whether the allegations are true or false or whether there is preponderance of probability for commission of such an offence. At this stage, the Court cannot examine and scrutinise the record, of the, case in order to ascertain the veracity of the F.I.R. complaint. The provisions of Section 18 of the Act, 1989 put a complete bar against the entertainment of an application for anticipatory bail where prima facie the contents of the FIR disclose the ingredients of the commission of the offence under the Act of 1989 which is apparent from the perusal of the section itself and thus the Court at the most would be required to evaluate the F.I.R. itself with a view to find out if the facts emerging taken at their face value disclose the existence of the ingredients constituting the alleged offence, then

the Court would not be justified in entering into an enquiry as to the reliability or a genuineness or otherwise of the allegations made in the F.I.R. or the complaint. Please see *Satya Prakash v. State of C.G.* 2004 (1) Cg LJ 162.

9. It has also been held by High Court of Madhya Pradesh in the matter of *Dule Singh v. State of M.P.* through Police Raigarh 1993 (1) MPJR 223 that a strict construction should be placed on the word "accusation" within the meaning of Section 18 of the Act. As such the "intention" or "intent" which is material ingredient of the offence u/s 3(1)(x) of the Act not being clearly stated by the witnesses and there being no statement that the offence was committed because the complainant belonged to Scheduled Caste, it cannot amount to an "accusation" of an offence within the meaning of Section 18 of the Act so as to bar an application u/s 438, Cr.P.C.

10. The High Court of Orissa has also held in the matter of *Ramesh Prasad Bhanja v. State of Orissa* 1996 Cri LJ 2743 that if no prima facie case u/s 3 of the Act has been made out, It cannot be said that there is an "accusation of commission of an offence under the Act" and in that case there can be no hesitation to say that the applicability of the provision of Section 438 of the Code is not excluded.

11. If we examine the contents of the FIR and also the recommendations of the Superintendent Police, on the basis of which, it is stated, that the offence under Special Act has been withdrawn by the prosecution, it would appear that even otherwise also prima facie, to fore appears to be no material to attract the provisions of Section 3(i)(x) of the Special Act. Prima facie, the contents of the FIR would show that the elements of intentional insult or intimidation with intent to humiliate a member of a Scheduled Caste or Scheduled Tribe in any place within the public view, as provided in part (x) of Sub-section (1) of Section 3 of the aforesaid Act is not available in this case. Therefore, this anticipatory bail application would be maintainable.

12. Considering the facts and circumstances of this case, particularly considering the contents of the FIR and also the conduct of the father of the applicant, along with their statements, I am of the opinion that present is a fit case to extend the benefit of Section 438 of the Cr.P.C. to the applicants.

13. In the result, the petition is allowed.

14. It is directed that in the event of arrest, these applicants shall be released on bail on each of them furnishing a personal bond in sum of Rs. 5,000/- (Rupees five thousand) with one surety each in the like amount to the satisfaction of the officer arresting them.

15. Keeping in view the principles Laid down in the matter of *Salauddin Abdulsamad Shaikh Vs. State of Maharashtra*, . it is hereby directed that this order shall remain in force for a period of six weeks from today, during which the applicants may apply for regular bail before the concerned Court.

Certified copy as per rules.