

(2017) 02 AP CK 0053

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 874 of 2017

Dandi Kondaiah

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 20-02-2017

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438 I
Penal Code, 1860 (IPC) — Section 324, Section 34, Section 506, Section 509
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section (3)(1)(x)

Citation : (2017) 1 ALTcr 401

Hon'ble Judges : M. Satyanarayana Murthy, J.

Bench : Single Bench

Advocate : Mr. Masthan Naidu Cherukuri, Advocate, for the Petitioners; Public Prosecutor (AP), for the Respondent

Final Decision : Disposed Off

Judgement

M. Satyanarayana Murthy, J.—This petition is filed under Section 438 of Criminal Procedure Code (for short "Cr.P.C.") for grant of anticipatory bail to the petitioners/accused Nos. 1 to 3, in the event of their arrest in Crime No. 93 of 2016 of Thottambedu Police Station, Chittoor District, registered for the offences punishable under Sections 324, 506, 509 read with 34 of Indian Penal Code (for short "IPC") and under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (POA) Act (for short "the S.Cs and S.Ts. (POA) Act"), apprehending their arrest.

2. The case of the prosecution in brief is that on 14-12-2016 at about 8.00 a.m when Naluguri Guravaiah, Naluguru Chelamaiah, Naluguru Rangaiah, K. Bhaskaraiah, Singama Veerabhadraiah and also the son of China Chelamaiah came to the fields and adjusting the ridges, de facto complainant-T. Naguramma went there and resisted them by stating that they cannot remove the ridges. At that time kondaiah, Murali abused her that "Madiga dana niku ekkada polamu edi langa" and Murali took a stone and pelted at her left eye, as a result of which she sustained a bleeding injury, they also behaved in a highhanded manner and tried

to beat the de facto complainant. Thereupon, her husband Penchalaiah and Narayanamma came and rescued her from the hands of the said persons. Thus, the de facto complainant being a member of Scheduled Caste received injuries in the hands of the petitioners and they also insulted her in public view by touching her caste name. Thereafter, the de facto complainant lodged a complaint with the police, based on the said complaint police registered the crime and issued FIR.

3. The present petition is filed on the ground that a civil dispute is pending between the parties herein in O.S.No. 43 of 2014 before the Principal Junior Civil Judge, Srikalahasthi, wherein the order of interim injunction as well as police aid was granted because of the frequent interference of the de facto complainant and her family members by violating the orders of the Civil Court. The petitioners herein also lodged a complaint against the de facto complainant for the offences punishable under Sections 188, 323, 341, 447 and 506 read with 34 of PC at the first instance, but the police registered the same as Crime No. 89 of 2014 i.e. much prior to registration of present crime against the petitioners. Thus, the question of abusing the de facto complainant, raising her caste name does not arise. It is further contended that K. Bhaskaraiah is a member of Scheduled "Caste and the provisions of the S.Cs. and STs. (POA) Act would not attract, thereby the bar under Section 18 of S.Cs and S.Ts. (POA) Act has no application to the facts of the present case and that the complainant" was lodged with a mala fide intention and direct the Station House Officer, Thottambedu Police Station to release the petitioners on bail, in the event of their arrest.

4. During hearing, Sri C. Masthan Naidu, learned counsel for the petitioners, would contend that the complaint was lodged by the de facto complainant only with a view to bring the petitioners to their terms by invoking Section 3(1)(x) of the S.Cs. and S.Ts. (POA) Act as there is a bar to grant pre-arrest bail, but such bar would not apply when no offence, prima facie, is committed by the petitioners and in support of his contentions he relied on a judgment of Apex Court rendered in "Vilas Panduranga Pawar v. State of Maharashtra (2012) 8 SCC 795"; "Budapap v. State of Andhra Pradesh 2007 (2) ALT (CrI.) 106 (A.P.)", "Paracha Mohan Rao v. State of Andhra Pradesh 2013 (3) ALT (CrI.) 190 (A.P.) = 2013 (2) ALD (CrI.) 535" and "Karri Imya Lathasri v. State of Andhra Pradesh 2014 (2) ALT (CrI.) 376".

5. Whereas the learned Public Prosecutor for the State of Andhra Pradesh would contend that when the petitioners abused the de facto complainant by touching her caste name, certainly it would attract the offence punishable under Section 3(1)(x) the S.Cs. and S.Ts. (POA) Act and even the principle laid down in "Vilas Pandurang Pawar v. State of Maharashtra" (referre supra) would apply to the present facts the case, there is prima facie material again the petitioners to conclude that the petitioners committed the offence punishable under Section 3(1)(x) of the S.Cs. and S.Ts (POA) Act. Therefore, in view of the ba contained in Section 18 of the S.Cs. and S.Ts (POA) Act, this Court cannot grant pre-arrest bail to the petitioners for the offence punishable under Section 3(1)(x) the S.Cs. and

S.Ts. (POA) Act. Learned Public Prosecutor for the State of Andhra Pradesh further contended that K. Bhaskaraiah did not produce his community certificate issued by the competent authority, but produced the community certificate issued in favour of his daughter allegedly. Therefore, on the basis of such certificate, it is difficult to conclude that K. Bhaskaraiah also belonged to Scheduled Caste and prayed to dismiss the petition.

6. In view of the facts narrated above, there is a civil litigation pending between the parties before the Court of the Principal Junior Civil Judge, Srikalakasti and the learned counsel for the petitioners produced a copy of the order in I.A.No. 308 of 2014 in O.S.No. 43 of 2014 passed by the Principal Junior Civil Judge, Srikalahasti in a petition filed under Order 39 Rules 1 and 2 of C.P.C. De facto complainant-T. Nagooramma is the respondent No. 2 in the said interlocutory application. Against the de facto complainant, her husband and two others, the suit in O.S.No. 43 of 2014 was filed. Initially ex parte interim injunction order was passed and thereafter, on contest the petition was allowed and ex part interim injunction order was made absolute till the disposal of the suit. The said O.S.No. 43 of 2014 is still pending. The schedule of property in the above suit and the scene of occurrence in the present crime is one and the same. The petitioners also filed I.A. No. 223 of 2016 in O.S.No. 43 of 2014 to take necessary action against the de facto complainant and others for disobedience of the order of the Court and the same was allowed by the Principal Junior Civil Judge, Srikalahasthi holding that the de facto complainant, her husband and two others disobeyed the interim order in I.A.No. 308 of 2014 and ordered police protection on payment of process to enforce the interim order passed by the Court.

7. While the matter stood thus, the alleged incident took place on 14-12-2016 at 08.00 a.m., whereas the police protection was provided on 4-3-2016 i.e., much prior to the alleged incident police protection was granted to enforce the order. When an interim order passed under Order 39 Rules 1 and 2 of C.P.C. the de facto complainant is not supposed to interfered with the possession and enjoyment of the property, which is the subject matter of the suit, but she appears to have been interfered, prima facie, with the possession of the property, which is the subject matter of the suit and thereupon a quarrel took place between them and in the said incident both parties sustained injuries in the said incident. The petitioners also lodged a complaint dated 24-10-2014 when the de facto complainant interfered with the enjoyment of the property and caused injuries voluntarily on the body of the D. Rajagopal, which is registered as a case in crime No. 89 of 2014. Thus, it is evident from the material produced before the Court that there is a rival claim over the property and despite granting interim injunction in I.A.No. 308 of 2014 in favour of the D. Kondaiah-petitioner herein, D. Rajagopal and D. Lokanadham; the de facto complainant prima facie, appears to have been interfering with the possession and enjoyment of the property. In such case, there is ever possibility to foist a false case or to commit such offence by the either of the parties Moreover, when an interim injunction is

granted and provided police protections to enforce the interim order granted by the Court, the de facto complainant is not supposed to interfere with the possession and enjoyment of the property by the petitioner No. 1 and two others, but conveniently she interfered with the possession of the property and lodged complaint somehow to rope them with a serious offence punishable under Section 3(1)(x) of the S.Cs and S.Ts (POA Act and to see that they shall not be enlarged in pre-arrest bail.

8. When there is no prima facie material against the petitioners to conclude that they committed offences, pre-arrest bail can be granted as the per the principles laid down in "Gurbaksh Singh Sibbia v. State of Punjab AIR 1980 SC 1632".

9. Section 438 Cr.P.C. deals with direction for grant of bail to person apprehending arrest and it reads as follow

(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for direction under this section; and that Court may if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

(2) When the High Court or the Court of Session makes a direction under subsection (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including -

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of Section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).

10. The power of the Court under Section 438 Cr.P.C. is purely discretionary this Court has to exercise its power judiciously based on settled principles. But, the circumstances to exercise such jurisdiction may vary from case to case. The law regarding grant of anticipatory bail is elaborately discussed by the Constitution

Bench of the Apex Court in "Gurbaksh Singh Sibbia v. State of Punjab" (referred supra), as the power of granting "anticipatory bail" is somewhat extraordinary in character and it is only in exceptional cases where it appears that a person might be falsely implicated, Or a frivolous case might be launched against him, or "there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail" that such power is to be exercised. No hard and fast rule can be laid down in discretionary matters like grant or refusal of bail whether anticipatory or regular bail. The Apex Court further held that, 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 Tides; 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 no C-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. Therefore, anticipatory bail can be granted even in serious cases like economic offences and States should have no consideration for grant or refusal of grant of anticipatory bail, as there can be no presumption that the wealthy and the mighty will submit themselves to trial and that the humble and the poor will run away from the course of justice, any more than there can be a presumption that the former are not likely to commit a crime and the latter are more likely to commit it. Therefore, while dealing with the application for grant of pre-arrest bail or anticipatory bail, the Court must take into consideration the guidelines issued in "Gurbaksh Singh Sibbia v. State of Punjab " (referred supra).

11. For granting pre-arrest bail under Section 438 of Cr.P.C. the Apex Court laid down 10 guidelines in "Siddharam Satlingappa Mhetre v. State of Maharashtra 2011 (1) ALT (CrI.) 69 (SC) = AIR 2011 SC 312" which are as follows:

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii. The possibility of the applicant to flee from justice;
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

iv. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the held of Sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

12. In the present case, one of the offences allegedly committed by the petitioners is punishable under Section 3(1)(x) of the S.Cs and S.Ts (POA) Act. No doubt, there is a clear bar to grant pre-arrest bail directing the concerned police officials to release the accused who committed offences punishable under the provisions of S.Cs. and S.Ts. (POA) Act, but the law declared by the Apex Court in "Vilas Panduranga Pawar v. State of Maharashtra " (referred supra) carved out certain exceptions to such interdict and held that Section 18 of the S.Cs. and S.Ts. (POA) Act creates a bar invoking Section 438 of Cr.P.C. 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 complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no Court shall entertain application for anticipatory bail, unless it prima facie finds that such an offence is not made out.

13. If the principle laid down in the above judgment is applied to the present facts of the case, it is the duty of the Court to find out whether the petitioners committed the offence punishable under the provisions of S.Cs and S.Ts. (POA) Act prima facie. If the Court concludes that no offence is committed by the petitioners, the Court can exercise its discretionary jurisdiction conferred on it by Section 438 of Cr.P.C. and grant pre-arrest bail.

14. Similarly, in "Budapap v. State of Andhra Pradesh" (referred supra) single

Judge of this Court is of the view that in order to attract the provisions of S.Cs and S.Ts. (POA) act, there must be an intention to humiliate a member of the Scheduled Caste or a Scheduled Tribe and the Court can grant pre-arrest bail if concludes that there is no prima facie material against the petitioners.

15. In "Paracha Mohan Rao v. State of Andhra Pradesh" (referred supra) this Court held that originally, the Code of Criminal Procedure did not contain any corresponding provision to Section 438 which empowers the High Court or Court of Session to grant anticipatory bail in certain circumstances. Section 438 of Cr.P.C. was substituted by the Code of Criminal Procedure (Amendment Act, 25, 2005). By virtue of the said provision, special powers have been conferred only on the High Court and Court of Session to grant pre-arrest bail, which is commonly known as anticipatory bail. Earlier to the introduction of the provision relating to the anticipatory bail, there was a conflict of judicial opinion about the power of Court to grant anticipatory bail under the provisions then existing under the Code. The majority view was that there was no such power under the provisions then existing in the Code of Criminal Procedure. The provisions for granting anticipatory bail was thereafter introduced setting at rest the conflict of judicial opinion. Apart from other things, the main purpose for introducing the provisions for granting anticipatory bail was that in our society it is not uncommon for influential and powerful persons to implicate their opponents in false cases and therefore it was felt to afford some protection to such victims, the prime object of the provision thus, seems to be to save the citizens from being falsely implicated in non-bailable offences and to protect the life and personal liberty of the citizens without being jeopardized at the instance of the unscrupulous elements.

16. A similar view was expressed by another Single Judge of this Court in "Karri Ramya Lathasri v. State of Andhra Pradesh " (referred supra) after reviewing the entire law on the subject.

17. Thus, the law consistently declared by this Court is that if no case is made out to attract the offence punishable under Section 3(1)(x) of the S.Cs. and S.Ts. (POA) Act, the Court can exercise its power and grant pre-arrest bail.

18. Here, the parties have developed bitter enmity and fighting for their rights in the property since 2014 and the petitioner No. 1 also obtained ex parte interim injunction, which was made absolute subsequently and also police protection to enforce the order passed by the Court, still the de facto complainant repeating such interference in utter disobedience of the interim injunction granted by the competent Court.

19. No doubt, there is possibility of foisting a false case on account of such bitter enmity; at the same time, there is a possibility of commission of offence by the petitioners also. When there are two possibilities on account of civil litigation, it is difficult for this Court at this stage to conclude that the petitioners committed offence, more particularly when they obtained police protection for enforcement

of the interim order and that apart the de facto complainant having lost all her opportunities to take possession of the property, in one way or the other the possibility of foisting a false case cannot be ruled out.

20. As discussed above, in view of the civil litigation pending between the parties, at this stage, it is difficult for this Court to conclude that the petitioners committed the offence punishable under Section 3(1)(x) of S.Cs and S.Ts (POA) Act.

21. So far as K. Bhaskaraiah is concerned, he produced community certificate obtained by his daughter from the competent authority i.e., Tahsildar, Thottambedu Mandal, who certified that the daughter of K. Bhaskaraiah, petitioner No.3 herein belongs to Scheduled Caste. Unless, the petitioner No.3 herein belongs to Scheduled Caste, the said certificate cannot be issued in favour of the daughter of the petitioner No.3 certifying that she belongs to Scheduled Caste. Therefore, K. Bhaskariah, petitioner No. 3 is a member of Scheduled Caste and the provisions of the S.Cs and S.Ts. (POA) Act cannot be invoked against such person, who belongs to Scheduled Caste.

22. Considering the facts and circumstances of the case and the civil litigation pending between the parties in Courts, I find no material to conclude, prima facie, that the petitioners committed offence punishable under Section 3(1)(x) of S.Cs. and S.Ts. (POA) Act. Therefore, in view of the law declared by the Apex Court and this Court (referred supra) pre-arrest bail can be granted to the petitioners.

23. In the result, the criminal petition is allowed. The Station House Officer, Thottambedu Police Station, is directed to release the petitioners on bail, in the event of their arrest, on their executing personal bond for Rs. 50,000/- each (Rupees Fifty thousand only) with two sureties for a like sum each to his/her satisfaction and that the petitioners shall report before the Station House Officer, Thottambedu Police Station on every Saturday between 10.0 a.m. to 12.00 Noon for a period of two (2) months or till the date of filing of charge sheet, whichever is earlier.

24. The miscellaneous petitions pending, if any, shall also stand closed.