

(2024) 08 MP CK 0016

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 7748 of 2024

Santoshbai

APPELLANT

Vs

The State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 02-08-2024

Acts Referred:

Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 — Section 14A(2), 3(1)(r), 3(1)(f), 3(1) (s), 3(2)(v), 3(2)(va), 18, 18A
Indian Penal Code, 1860 — 420, 467, 468, 471, 120B, 406, 294, 506, 419
Code of Criminal Procedure 1973 — 228
Code of Criminal Procedure 1973 — Section 438, 439

Citation : (2024) 08 MP CK 0016

Hon'ble Judges : Prem Narayan Singh, J

Bench : Single Bench

Advocate : Manu Maheshwari, Agreema Sanghai, Anand Bhatt, Vinay Joshi

Final Decision : Dismissed

Judgement

Prem Narayan Singh, J

The present appeal filed by the appellant under section 14-A(2) of the SC/ST (Prevention of Atrocities) Act, 1989 for grant of anticipatory bail in connection with Crime No.215/2023, registered at Police Station-Nalkheda, District-Agar Malwa (MP) for the offence under Sections 420, 467, 468, 471, 120-B, 406, 294, 506, 419 of IPC, 1860 and Section 3(1)(r), 3(1)(f), 3(1) (s), 3(2) (v), 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) Act 1989 (hereinafter referred as " of the Act").

2. This appeal has been filed against the order dated 8.6.2024, passed by Special Judge SC/ST(PA), Agar Malwa, whereby learned Special Judge rejected the bail application of appellant with finding that there is prima facie case against the appellant punishable under the offences.

3. Learned counsel for the appellant submitted that the appellant is innocent and has falsely been implicated in the case. As per prosecution, the Complainant has

filed civil suit against the appellant and others. The said civil Suit was dismissed by the learned Trial Court. Thereafter, the complainant has filed an appeal which was also dismissed by the learned Appellate Court. Thereafter, the present FIR is filed as a counter blast. It is alleged that the said land has been purchased by the appellant through registered sale deed from a person whose name is Harlal. As per prosecution case, Harlal is the person from whom the land has been purchased but he has already expired before this registered deed. It is alleged that registered deed was executed by another person and the cheating and forgery by impersonation was committed by present appellant. However, such allegations were not proved by the complainant before the learned Civil Court and Civil Suit was dismissed. It is submitted that in this case co-accused Kaluram has been granted bail by this Court in CRA No. 5699/2020. Hence, counsel for appellant requested for anticipatory bail.

4. Learned counsel for the State as well as complainant opposed the appeal and submitted that since this is an anticipatory bail under Section SC/ST (POA) Act, hence, it is not maintainable under the provisions of Sections 18 and 18-A of the SC/ST (POA) Act and therefore, the appeal should be rejected on the basis of maintainability.

5. In reply, counsel for the appellant relied upon the judgment passed by Hon'ble Supreme Court in the case of Dr. Subhash Kashinath Mahajan vs. State of Maharashtra, reported in (2018)6 SCC 454 and the case of Prathvi Raj Chauhan vs. Union of India, reported in 2020 2 SCC Online SC 159 in support of his submissions. It is submitted that there is nothing on record by which it can be assumed that the offence was committed and only because the complainant is belonging to scheduled castes and scheduled tribes, the prima facie case cannot be made out.

6. Before considering rival submissions of both the parties, the provision of Section 18 and 18-A of the Act is worth to refer here.

"18. Section 438 of the Code not to apply to persons committing an offence under the Act.—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.

18-A No enquiry or approval required (1) For the purposes of this Act, —
(a)preliminary enquiry shall not be required for registration of a First Information Report against any person; or

(b)the investigating officer shall not require approval for the arrest, if necessary, of any person, against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply.

.(2). The provision of Section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court. "

7. The learned counsel for appellant has emphatically placed his reliance on Subhash Kashinath Mahajan (supra). However, it emerged that actually Section 18-A of the Act has been enacted only to nullify the judgment of Dr. Subhash Kashinath Mahajan (supra). On this aspect the initial lines of para No. 2 of Prithviraj Chauhan (supra) is worth referring here:-

"2. It is submitted that Section 18-A has been enacted to nullify the judgment of this Court in Subhash (supra) in which the following directions were issued.."

8. On this aspect, in Prithviraj Chauhan (supra), the Hon'ble Apex Court after considering the law laid down in the case of Shakuntala Devi Vs. Baljinder Singh (2014) 15 SCC 521, Dr. Subhash Kashinath Mahajan (supra) viewed as under:-

"9. The section 18A(i) was inserted owing to the decision of this Court in Dr. Subhash Kashinath (supra), which made it necessary to obtain the approval of the appointing authority concerning a public servant and the SSP in the case of arrest of accused persons. This Court has also recalled that direction on Review Petition (Crl.) No.228 of 2018 decided on 1.10.2019. Thus, the provisions which have been made in section 18A are rendered of academic use as they were enacted to take care of mandate issued in Dr. Subhash Kashinath (supra) which no more prevails.

The provisions were already in section 18 of the Act with respect o anticipatory bail.

10. Concerning the applicability of provisions of section 438 Cr.PC, it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A (i) shall not apply. We have clarified this aspect while deciding the review petitions.

11. The court can, in exceptional cases, exercise power under section 482 Cr.PC for quashing the cases to prevent misuse of provisions on settled parameters, as already observed while deciding the review petitions. The legal position is clear, and no argument to the contrary has been raised.

12. The challenge to the provisions has been rendered academic. In view of the aforesaid clarifications, we dispose of the petitions."

9. In view of the aforesaid law laid down by the Hon'ble Apex Court in Prathviraj Chohan(Supra), it is clearly evinced that only in those cases where the prima facie case is not made out, the rigour of Section 18 and 18-A of the Act can be eschewed. In view of that, the matter has been pondered. As per the FIR and the statements of complainant party, at this stage, this Court is of the considered opinion that there is no reasonable ground to reach at the conclusion that there is no prima facie case against the appellant. As per the available documents in case diary, sale deed was executed in favour of the appellant herself by a dead person, therefore, it cannot be gainsaid that there is a prima facie case made out against the appellant. So far as bail granted by this Court to co-accused Kaluram

is concerned, it was a regular bail filed under Section 439 of CrPC and in that case also it was not held that no prima facie case is made out against the co-accused Kaluram.

10. In view of the aforesaid deliberations, since, there is a prima facie case under Sections 420, 467, 468, 471, 120-B, 406, 294, 506, 419 of IPC, 1860 and Section 3(1)(r), 3(1)(f), 3(1)(s), 3(2)(v), 3(2)(va) of SC/ST (POA) Act 1989. against the appellant is available, then the anticipatory bail cannot be granted in favour of the appellant. Hence, the finding of learned Trial Court is affirmed and the appeal is hereby dismissed.

11. It is directed that the learned Trial Court should not be influenced by the observation of this Court passed in this appeal.