

(2023) 02 MP CK 0072

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 2988 Of 2023

Sujjansingh

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 23-02-2023

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(da), 3(1)(dha), 3(2)(V), 3(2)(V)(A), 14(A)(2), 18
Code Of Criminal Procedure, 1973 — Section 161, 164, 438, 438(2)
Indian Penal Code, 1860 — Section 34, 294, 302, 307, 325, 506
Evidence Act, 1872 — Section 27

Citation : (2023) 02 MP CK 0072

Hon'ble Judges : Subodh Abhyankar, J

Bench : Single Bench

Advocate : ?Manoj Saxena, Harshlata Soni

Final Decision : Disposed Of

Judgement

Subodh Abhyankar, J

The appellant has preferred this appeal (first) under Section 14(A) (2) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989 (as amended by Act of 2015) read with Section 438 of the Cr.P.C. being aggrieved by the order dated 13.02.2023 passed by the Special Judge, SC/ST Act, Shajapur (M.P.) whereby application for grant of anticipatory bail has been dismissed.

Appellant is apprehending his arrest in connection with Crime No.414/2022 registered at Police Station Susner, District Agar Malwa for offence punishable under Sections 307, 325, 294, 506, 34, 302 of the Indian Penal Code, 1860 and Sections 3(1)(da), 3(1)(dha), 3(2)(V), 3(2)(V)(A) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'S.C./S.T. Act').

Counsel for the appellant has submitted that the appellant has nothing to do with the aforesaid offence as even as per the FIR lodged at the instance of Ashok,

who happens to be the grand-son of the deceased, he has stated that at the time of the incident on 15.12.2022 only three persons were present, who had assaulted his grand-father. However, subsequently under Sections 161 and 164 of the Cr.P.C. his statements have also been recorded in which certain improvements have been made by the complainant and it is also stated that in addition to three persons, namely, Akram, Salim and Arman, three other unknown persons were also present in the Bolero jeep, from which they had come to the spot. It is submitted that the appellant has nothing to do with the aforesaid dispute and for the reasons best known to the complainant's side, he is also arraigned as an accused in the subsequent statements of the witnesses.

It is also submitted that the bar under Section 18 of the S.C./S.T. Act would also not be applicable in the present case as the appellant was not even present on the spot even as per the FIR. Thus, the appellant be released on anticipatory bail.

Learned counsel for the respondent/State, on the other hand, has opposed the prayer and it is submitted that it is true that in the FIR there is no reference of any other person apart from the three named persons, however, in their statements recorded under Sections 161 and 164 of the Cr.P.C. the witnesses have clearly mentioned the presence of three unknown persons. On a query made by this Court, if the present appellant's name is also taken by the accused persons, who were present on the spot in their memos prepared under Section 27 of the Evidence Act, counsel has submitted that there is no reference of presence of any other person on the spot, other than the three named accused persons namely Akram, Salim and Arman.

Counsel for the respondent/State has also submitted that the deceased Rameshchandra had also informed his son Rohit that three other persons were also present on the spot and their names are Meherban Singh, Sujjansingh and Ishwar, however, no police statement or dying declaration has been recorded of the deceased.

Having considered the rival submissions and on perusal of the case diary, this Court finds force in the submissions as advanced by the counsel for the appellant and is of the opinion that the presence of the appellant on the spot on 15.12.2022 appears doubtful, as there was no reason for the grandson of the deceased not to mention the presence of any other person on the spot apart from the three named accused persons and in such circumstances, the bar under Section 18 of the Act of 1989 would also not be applicable. In view of the same, this Court finds that the appellant is entitled to be released on anticipatory bail as his custodial interrogation does not appear necessary.

Consequently, setting aside the impugned order, the appeal is hereby allowed. It is directed that in the event of arrest, appellant shall be released on bail, upon executing a personal bond in the sum of Rs.25,000/- (rupees twenty five thousand only) and furnishing solvent surety in the like amount to the satisfaction of the arresting officer (Investigating Officer).

The appellant shall make himself available for interrogation by a police officer, as and when required. He shall further abide by the other conditions enumerated in Sub Section (2) of Section 438 of the Cr.P.C.

Accordingly, criminal appeal stands disposed of.

C.c. as per rules.