



2024:KER:29061

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

FRIDAY, THE 12TH DAY OF APRIL 2024 / 23RD CHAITHRA, 1946

CRL.A NO. 2032 OF 2023

AGAINST THE ORDER/JUDGMENT DATED 21.12.2023 IN CRMC  
NO.303 OF 2023 OF ADDITIONAL DISTRICT COURT & SESSIONS  
COURT - I, KASARAGOD/I ADDITIONAL MACT, KASARAGODE

APPELLANT/ACCUSED:

X  
XXXXX

BY ADVS.  
S.RAJEEV  
V.VINAY  
M.S.ANEER  
SARATH K.P.  
ANILKUMAR C.R.  
PRERITH PHILIP JOSEPH  
K.S.KIRAN KRISHNAN

RESPONDENT/STATE OF KERALA:

- 1 STATE OF KERALA  
REP. BY PUBLIC PROSECUTOR HIGH COURT OF KERALA  
ERNAKULAM, PIN - 682031
- 2 STATION HOUSE OFFICER  
(CRIME NO.303/2023 OF BADIADKA POLICE STATION,  
KASARGOD DISTRICT), PIN - 671551

SMT.SEENA C - PUBLIC PROSECUTOR  
SMT.NIMA JACOB - PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION  
ON 12.04.2024, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:



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**P.G. AJITHKUMAR, J.**

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**CRL.APPEAL No.2032 of 2023**  
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**Dated this the 12<sup>th</sup> day of April, 2024**

**J U D G M E N T**

The application for anticipatory bail filed under Section 438 of the Code of Criminal Procedure, 1973 by the appellant was dismissed by Additional Sessions Judge-I Kasaragod as per the impugned order. The appellant challenges that order.

2. The appellant is the accused in crime No.1051/2023 of Badiadaka Police Station. The offences alleged were under Sections 354A(i)(iv) and 354A(iii) of the Indian Penal Code, 1860 and Section 9(f) read with Section 10 and Section 11(i) read with Section 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and Section 3(1)(w)(i) and 3(1)(w)(ii) and 3(2)(v) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 [SC/ST (POA) Act].

3. The prosecution case as follows:

The victim of the offence is aged 13 years. The



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petitioner was her teacher. On a Saturday, three weeks before 29.11.2023, the petitioner asked the victim to reach the library hall in the school and he had sexually assaulted her. The victim was further intimidated not to disclose the incident to anyone. The victim belongs to a Scheduled Caste and knowing that fact, the petitioner committed such an offence.

4. Despite giving notice the defacto complainant/victim or her guardian did not choose to appear before this Court.

5. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

6. The learned counsel for the petitioner would submit that even accepting the allegations in its entirety, no offence under the provisions of the SC/ST (POA) Act would be attracted and therefore there is no bar for grant of anticipatory bail. Considering the nature of the offence, there is absolutely no reason to detain the petitioner for the furtherance of the investigation. Accordingly, the learned counsel maintains that this petition is liable to be allowed.

7. The learned Public Prosecutor would submit that the



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materials collected so far would establish the commission of the offence by the petitioner alleged against him and therefore granting anticipatory bail to him will adversely affect a fair investigation of the matter. It is further submitted that unless the petitioner is interrogated, the entire evidence cannot be collected, which will fail a proper prosecution.

8. In **Vilas Pandurang Pawar v. State of Maharashtra [(2012) 8 SCC 795]**, the Apex Court held that Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. 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.

9. This principle was followed by this Court **Ahammedkutty Pothiyil Thottiparambil v. Union of India and others [MANU/KE/1783/2023]**. This Court explained the position of law that Section 18 does not apply



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to cases where there is no *prima facie* case or patent false implication or when the allegation is motivated for extraneous reasons. It was observed that in essence, Section 18 of the SC/ST Act does not bar absolutely the grant of anticipatory bail. It is explained,-

“20. xx xx xx As already noticed, the question considered in Subhash Kashinath Mahajan was whether there is an absolute bar in the SC/ST Act against grant of anticipatory bail and the question was answered in the negative. A close and meticulous reading of the decision of the Apex Court in Subhash Kashinath Mahajan would indicate that the reasons in essence, on the basis of which the Apex Court held that the SC/ST Act does not bar absolutely the grant of anticipatory bail, are the following:

- i) The provisions of the SC/ST Act need to be given a purposive interpretation in the context of its background and its object to achieve the purpose of law.
- ii) In the background of the prevailing social conditions, if perpetrators of atrocities against members of SC/ST communities are granted anticipatory bail, they would not only threaten and intimidate the victims and prevent or obstruct them from prosecuting the offenders, but would also misuse their liberty and terrorise the victims and prevent investigation;
- iii) In statutes where an identical provision excluding



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the application of Section 438 of the Code exists, there are restrictions on accused for being released on regular bail also, whereas there is no such restriction in the SC/ST Act in the matter of releasing the accused on regular bail. The position in SC/ST Act is that after rejecting an application under Section 438 of the Code, the court can grant regular bail immediately after the arrest and there is no logical rationale behind the situation of putting a fetter on grant of anticipatory bail when there is no such restriction for grant of regular bail.

iv) It has been judicially acknowledged that there have been instances of abuse of the provisions of the Act for settling private disputes. There are also instances of complaints being lodged against public servants/quasi-judicial/judicial officers with oblique motive for satisfaction of vested interests.

v) The Act has become an instrument to blackmail or to wreak personal vengeance. The Act is also being used to deter public servants from performing their bona fide duties. Consequently, innocent citizens are termed as accused, which is not intended by the legislature. As such if exclusion of the application of Section 438 Of the Code is not limited to genuine cases, there will be no protection to innocent citizens.”

10. Here, the person accused of is a teacher. Going by the allegations, the victim was brought to the library in the school and sexually assaulted. Having regard to the facts and



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circumstances of the case, I am of the view that the bar under Section 18 of the SC/ST Act does not attract in this case. Further, I am of the view that the detention of the petitioner during the investigation is found unnecessary. But the investigating Officer should be able to interrogate the petitioner and collect evidence in order to conduct a proper investigation in the matter. Accordingly, I hold that the appellant is entitled to get anticipatory bail.

11. In such circumstances, this appeal is allowed and the petitioner is directed to surrender before the investigating officer within two weeks. After interrogation and other process of investigation in the event of his being arrested, he shall be released on bail on the execution of a bond 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) He shall appear before the Investigating Officer as and when directed;
- (ii) He shall not influence or intimidate witnesses or tamper with evidence; and
- (iii) During the bail period, he shall not get involved in any offence.



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

Sd/-

**P.G. AJITHKUMAR**  
**JUDGE**

SMF