

Don vs State of Kerala

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Court : Kerala

Decided On : Feb-22-2024

Judge : Honourable Mr.Justice K. Babu

Appeal No. : CRL.A/248/2024

Appellant : DON

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K. BABU THURSDAY,
THE 22ND DAY OF FEBRUARY 2024 / 3RD PHALGUNA, 1945 CRIME
NO.15/2024 OF Kuttampuzha Police Station, Ernakulam AGAINST THE
ORDER/JUDGMENT CRMC 296/2024 OF DISTRICT COURT &
SESSIONS COURT, ERNAKULAM APPELLANT: DON AGED 28
YEARS S/O JOY.KALLARACKAL HOUSE, MLAWANAKARA,
POOYAMKUTTY P.O, KUTTAMPUZHA VILLAGE, KOTHAMANGALAM
TALUK, ERNAKULAM DISTRICT, PIN - 686681 BY ADVS. MATHEW
DEVASSI A.C.DEVASIA RESPONDENTS: 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, PIN - 682031 2 SATHEESH AGED 36 YEARS S/O

CHELLAPAN, URIYAMPETTY TRIBAL SETTLEMENT COLONY,
KUTTAMPUZHA VILLAGE, ERNAKULAM DISTRICT, PIN - 686681
SRI.G.SUDHEER P P THIS CRIMINAL APPEAL HAVING COME UP
FOR ADMISSION ON 22.02.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

K.BABU, J.

----- Crl.A.No.248 of 2024
----- Dated this the 22nd day of February, 2024

JUDGMENT

This is an appeal filed under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act,

1989. The challenge in this appeal is to the order dated

02.02.2024 in Crl.M.C No.296/2024 passed by the Special Court for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Ernakulam Division.

2. The appellant is the accused in Crime No.15/2024 of

Kuttampuzha Police Station. He is alleged to have committed offences punishable under Sections 323, 324, 341 and 294(b) of the IPC and Section 3(1), (r), (s) and 3(2) (va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amendment Act 2015) (for short the Act). The prosecution case:

3. The defacto complainant, who belongs to Scheduled

Tribe came to Kuttampuzha for repairing his jeep bearing Regn.No.KL-13-C-1391. The appellant approached him and asked whether he intended to sell his jeep for a consideration of Rs.1,00,000/- (Rupees One Lakh only). The defacto complainant was not willing to consider the request. The appellant who is not a member of Scheduled Castes or Scheduled Tribes, with the knowledge that the

defacto complainant belongs to Scheduled Tribes, on 18.01.2024 at about 4.00 p.m. with an intention to assault him caught hold of his collar and fisted on his stomach with the key of the jeep and also slapped on his left cheek. He also kicked down the defacto complainant. The appellant also humiliated him in public view by calling his caste name.

4. Notice was served on the victim. He did not turn up.

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

6. The learned counsel for the appellant submitted that

the allegations levelled by the prosecution are false. The learned counsel further submitted that the bar under Sections 18 and 18-A of the Act is not applicable to the present facts, as the prosecution failed to establish a prima facie case to bring out the offences under the Act.

7. The learned Public Prosecutor opposed the bail plea on the ground that there are materials to attract the offences alleged.

8. The Special Judge dismissed the application on the ground that the application is barred under Sections 18 and 18-A of the Act.

9. The case of the appellant is that he has been falsely

implicated in the crime. The appellant is a taxi driver. He is residing at Mlawana near Pooyamkutty. There are five tribal colonies situated about 7 to 20 kilometers away from Mlawana. Private vehicles ply from Mlawana to the settlement colonies. The major portion of the road from Mlawana to the settlement colonies passes through thick forest, where the presence of wild animals is always probable. Most of the tribal people use jeep for access to the colonies. The Motor Vehicle Department took a decision that all private jeeps plying through the said area should take taxi permit. The appellant and some other vehicle owners obtained taxi permit for their vehicles. The defacto complainant owns a private jeep, but he did not have a taxi permit. The appellant and some other taxi drivers filed a complaint before the Motor Vehicle Department alleging that the defacto

complainant used to ply his vehicle without obtaining a taxi permit. Thereafter, the victim had been living in inimical terms with the appellant and some other taxi drivers. On 18.01.2024 a scuffle occurred at the place of occurrence and the appellant sustained injuries. The victim also sustained some minor injuries. It is alleged that the appellant committed the offences under the Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, intentionally to harass him. The alleged occurrence did not take place in public view.

10. The appellant relies on Annexures 3 and 4 complaints submitted before the Motor Vehicle Department and Annexure 5 treatment summary in support of his contentions.

11. The learned counsel for the appellant relied on xxxx v. State of Kerala [2022 KHC 1001] in support of his contentions.

12. In Prathvi Raj Chauhan v. Union of India [(2020)

4 SCC 727], the Apex Court held that if the complaint does not make out a prima facie case for the applicability of the penal provisions of the Act, the bar created under Sections 18 and 18-A shall not apply.

13. In Subhash Kashinath Mahajan (Dr.) v. State of

Maharashtra and Another 2018 (2) KHC 207, while dealing with the pre- amended Act, the Supreme Court held that there is no absolute bar against grant of anticipatory bail in cases under the Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide. This Court in xxxx v. State of Kerala 2022 KHC 1001, while considering the application of the bar under Sections 18 and 18-A of the Act held thus:

Before analysing the question as to whether, a prima facie case is made out in this matter, it is necessary to address the tendency of false implication of innocent persons, who do not belong to Scheduled Caste or Scheduled Tribe community, by misusing the provisions of the SC/ST (POA) Act. There is no quarrel that stringent provisions are incorporated

in the SC/ST

(POA) Act to arrest the menace of atrocities against members

of the Scheduled Caste and Scheduled Tribes community by exploiting their backwardness. Since the Parliament found that the provisions of earlier SC/ST (POA) Act were not sufficient to meet the ends of justice, the Act was amended. After the amendment of the SC/ST (POA) Act, more stringent provisions have been incorporated in SC/ST (POA) Act with mandatory right of hearing to the defacto complainant at every stages of the court proceedings, as provided under Section 15A(3) of the SCT/ST (POA) Act. Thus, atrocities against Scheduled Caste or Scheduled Tribe community, in fact, is intended to be curtailed by the stringent provisions of SC/ST (POA) Act. Therefore, when genuine complaint/complaints at the instance of the Schedule Caste or Scheduled Tribe members, which would attract offence/offences incorporated under the SC/ST (POA) Act, if made, the same shall be viewed seriously and appropriate legal action shall go on, to attend the grievances of the complaint/complaints. At the same time, the courts should

have a duty to rule out the possibilities of false implication of innocent persons as accused, with a view to achieve ulterior motives of the complaints, with threat of arrest and detention of the accused in custody, because of the stringent provisions in the SC/ST (POA) Act in the matter of grant of anticipatory bail. It is shocking, rather a mind blowing fact that many innocent persons are victims of false implication under the SC/ST (POA) Act. Therefore, it is the need of the hour for the courts to segregate the grain from the chaff by analysing the genesis of the case, the antecedents prior to registration of the crime, with reference to existence of animosity between the complainant and the accused, with particular attention, vis-a- vis previous disputes/cases/ complaints, etc. while considering the question of prima facie case, when considering plea for pre-arrest bail. In cases, where there are materials to show that

the accused and the complainant are in inimical terms, and there are previous litigation between them or their men or representatives and in retaliation or as a sequel to the same, the allegations in the complaint constituting offence/offences under the SC/ST (POA) Act are made, the same may be the reasons to doubt the case prima facie. The instances are not exhaustive. Therefore, evaluation of the above facts would help the court while addressing the question of prima facie case, at the pre-arrest bail stage. On evaluation of the genesis of the case within the ambit of the above pari materia, if the court finds something to see the possibility of false implication, in such cases, the court could very well hold that prima facie, the prosecution allegations could not be believed for the purpose of denying anticipatory bail, after leaving the question as to commission of offence/offences for a detailed and fair investigation by the Investigating Officer. Indubitably, such a course of action is necessary to rule out the possibility of false implication

14. The learned Public Prosecutor submitted that the facts

considered in xxxx v.State of Kerala are distinguishable as in that case there are materials to show that the parties were living in inimical terms. The learned Public Prosecutor submitted that the present facts do not reveal that the appellant and the defacto complainant were living in inimical terms .

15. I have gone through the FIS and the materials relied on

by the appellant. I am of the view that the appellant has placed sufficient material to hold that the defacto complainant was living in inimical terms with the appellant .

16. The prosecution has no case that any custodial interrogation of the appellant is required. On analysis of the

facts placed before the Court, the mens rea of the appellant in

the commission of the alleged act is doubtful. There are no sufficient materials to show that the appellant called the caste name in public view.

17. The resultant conclusion is that the appellant has established a prima facie case for getting anticipatory bail.

18. While considering the scope of jurisdiction under Section 438 Cr.P.C., the Constitution Bench of the Apex Court in Gurbaksh Singh Sibbia & Ors. v. State of Punjab [(1980) 2 SCC 565] held thus:

31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the

converse of these propositions is not necessarily true. That is to say, 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 fides; and, equally, 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 not 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. The relevance of these considerations was pointed out in State v. Captain Jagjit Singh [AIR 1962 SC 253 : (1962) 3 SCR 622 :

(1962) 1 Cri LJ 216] , which, though, was a case under the

old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

19. In *Siddharam Satlingappa Mhetre v. State of Maharashtra* [(2011) 1 SCC 694] the Apex Court held thus:-

113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the B.A.Nos.5010 of 2021 & Connected cases 40 accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.

(In *Sushila Aggarwal v. State (NCT of Delhi)* [(2020) 5 SCC 1]) the declaration of law in *Siddharam Satlingappa Mhetre* that no condition can be imposed while granting order of anticipatory bail alone was overruled)

20. In *Sushila Aggarwal*, the Constitution Bench of the Apex

Court, following the decision in *Gurbaksh Singh Sibbia*, held

that while considering an application (for grant of anticipatory bail) the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc.

21. Having considered the entire circumstances on the touchstone of the principles discussed above, I am of the view that the appellant is entitled to anticipatory bail. In the result,

(i) The Criminal Appeal is allowed.

(ii) The order dated 02.02.2024 dismissing CrI.M.C No.296 of 2024 stands set aside.

(iii) The appellant shall appear before the Investigating Officer on 27.02.2024 between 10.00 AM and 11.00 AM for interrogation.

(iv) The Investigating Officer is directed to release

the appellant on bail, in the event of his arrest, on his executing bond for Rs.1,00,000/- (Rupees One Lakh only) with two solvent sureties each for the like sum.

v) The appellant shall appear before the Investigating Officer on all Mondays between 10.00 AM and 11.00 AM for a period of two months or till the final report is filed, whichever is earlier.

vi) The appellant shall not influence the witnesses or tamper with the evidence. Sd/- K. BABU JUDGE
saap APPENDIX OF CRL.A
248/2024 PETITIONER ANNEXURES Annexure 1 TRUE COPY OF THE FIR IN
CRIME NO.15/2024 OF KUTTAMPUZHA POLICE STATION DATED 19/01/2024
Annexure 2 TRUE COPY OF THE COMPLAINT DATED 3/11/2023 SUBMITTED
BEFORE THE JOINT, RTO, KOTHAMANGALAM Annexure 3 TRUE COPY OF
THE COMPLAINT FILED BY BINUMON

BEFORE THE POLICE SUPERINTENDENT ALONG WITH THE PHOTO OF
VEHICLE OF BEARING REGISTRATION NO.KL 07 K 3616 DATED Annexure 4
TRUE COPY OF THE PHOTO EVIDENCING THE TRAP LAID Annexure 5 A
TRUE COPY OF THE TREATMENT CERTIFICATE DATED 19/1/2024 ISSUED
BY RAJAGIRI HOSPITAL IN FAVOUR OF APPELLANT

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