IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

THURSDAY, THE 02ND DAY OF JULY 2020 / 11TH ASHADHA, 1942

CRL.A.No.450 OF 2020

AGAINST THE ORDER IN CRMC 576/2020 DATED 18-03-2020 OF SESSIONS COURT, ERNAKULAM

CRIME NO.107/2020 OF Thrikkakara Police Station, Ernakulam

APPELLANT/ACCUSED NO.1:

JULI C.J,
AGED 37 YEARS
D/O.LATE JULIAN CHERIYAPATTUPARAMBIL HOUSE,
EDAPPALLY P.O, KOCHI 682 024

BY ADV. SRI.B.SURJITH

RESPONDENTS/STATE & DE FACTO COMPLAINANT:

1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM 682 031

2 THE STATION HOUSE OFFICER,
THRIKKAKARA POLICE STATION, KAKKANAD,
ERNAKULAM DISTRICT 682 030

3 THE HEALTH INSPECTOR, THRIKKAKARA MUNICIPALITY,
KAKKANAD, ERNAKULAM DISTRICT 682 030

SRI SANTHOSH PETER-SR PP

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01-07-2020, THE COURT ON 02-07-2020 DELIVERED THE FOLLOWING:

"CR"

R.NARAYANA PISHARADI, J
****
Crl.A.No.450 of 2020

Dated this the 2nd day of July, 2020

J U D G M E N T

This is an appeal filed under Section 14A(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act').

2. The appellant is the first accused in the case registered as Crime No.107/2020 of the Thrikkakara police station under Sections 353, 294(b) and 506 (i) read with 34 I.P.C and also under Sections 3(1)(r) and 3(1)(s) of the Act. The penal provision mentioned in the first information statement as Section 4(i)(s) of the Act appears to be a mistake.

3. The prosecution case, in short, is as follows: On 05.03.2020, at about 12.30 hours, the appellant and the second accused together went to the office of the Thrikkakara Municipality to get back the documents which had been submitted by the appellant for obtaining licence to conduct a beauty parlour. The de facto complainant (hereinafter referred to as 'the victim') was working as Health Inspector in the Municipality. When there was some delay in returning the documents, the appellant and the second accused entered into the cabin of the victim. The appellant used obscene words to the annoyance of the victim and threatened him and caused obstruction to him in discharging his duties as a public servant. When the victim came out of his cabin, the appellant followed him and abused him by calling him by his caste name. She did so in the presence of the staff and the members of the public who were in the office.

4. The appellant filed an application for anticipatory bail under Section 438 Cr.P.C before the Court of Session, Ernakulam.

As per the impugned order, the learned Sessions Judge dismissed the aforesaid application. Learned Sessions Judge held that the allegations against the appellant, prima facie, constitute the offences punishable under Sections 3(1)(r) and 3(1)(s) of the Act and the bar under Section 18A of the Act is attracted. Learned Sessions Judge also found that custodial interrogation of the appellant would be necessary for the purpose of investigation and that granting of bail to the appellant would affect the smooth progress of the investigation and that possibility of the appellant influencing the witnesses and interfering with the investigation cannot be ruled out.

5. I have heard the learned counsel for the appellant and the learned Public Prosecutor and perused the records.

6. Section 15A(5) of the Act provides that, a victim shall be entitled to be heard at any proceedings under the Act in respect of bail. But, the appellant has not taken care to implead the victim in the appeal in his personal capacity. The third respondent in the appeal is the Health Inspector of Thrikkakara Municipality and not the victim. The appellant has also not taken

steps to issue notice to the victim through e-mail, as directed by this Court. However, after hearing the learned counsel for the appellant, in the nature of the order proposed to be passed by this Court in this appeal, I did not find it necessary to adjourn the appeal for enabling the appellant to take proper steps to issue notice to the victim.

7. Learned counsel for the appellant contended that the case against the appellant is a false one and that the averments in the first information statement given to the police by the victim do not reveal commission of any offence under the Act by the appellant and therefore, the learned Sessions Judge has gone wrong in invoking the provision contained in Section 18A(2) of the Act to decline the benefit of pre-arrest bail to the appellant.

8. On the other hand, learned Public Prosecutor would contend that the averments in the first information statement given to the police by the victim would disclose the ingredients of the offences under the Act alleged against the appellant. Learned Public Prosecutor would also contend that there is absolute bar under Sections 18 and 18A(2) of the Act against

granting anticipatory bail to a person accused of having committed an offence under the Act.

9. Section 18 of the Act provides that, nothing in Section 438 Cr.P.C shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under the Act. Section 18A(2) of the Act, which was introduced by Act 27 of 2018 and which came into force with effect from 20.08.2018, provides that the provisions of Section 438 Cr.P.C shall not apply to a case under the Act, notwithstanding any judgment or order or direction of any Court.

10. Sections 18 and 18A(2) of the Act create a bar to grant anticipatory bail in respect of an offence under the Act. However, a duty is cast on the Court to verify the averments in the first information statement or the complaint and to find out whether an offence under the Act has been prima facie made out or not (See **Vilas Pandurang Pawar v. State of Maharastra : AIR 2012 SC 3316**). If the averments in the first information statement or the complaint do not make out a prima facie case against the accused under the Act, the bar created by Sections

18 and 18A(2) of the Act shall not apply (See **Prathvi Raj Chauhan v. Union of India : AIR 2020 SC 1036**). The provisions contained in Sections 18 and 18A(2) of the Act do not prevent or prohibit the court from examining whether a prima facie case against the accused under the Act is made out or not. If it is found by the court that a prima facie case is not made out against the accused and that the allegations against the accused do not attract any of the offences under the Act, the bar created under Sections 18 and 18A(2) of the Act against granting anticipatory bail, does not come into play. Judicial scrutiny is permissible to ascertain whether the allegations raised against an accused attract any of the offences under the Act (See **Binesh v. State of Kerala : 2020 (1) KHC 240 : 2020 (1) KLT 328**).

11. Section 3(1)(r) of the Act provides that, whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view, shall be punished. Section 3(1)(s) of the Act provides that, whoever, not being a member of a Scheduled

Caste or a Scheduled Tribe, abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view, shall be punished.

12. In the instant case, on a perusal of the averments in the first information statement given to the police by the victim, it is evident that the allegations raised against the appellant would attract the offences punishable under Sections 3(1)(r) and 3(1)(s) of the Act. There is a specific allegation in the first information statement that the appellant insulted and abused the victim by calling him by his caste name, in the presence of the staff of his office and the members of the public.

13. Learned counsel for the appellant contended that the appellant had no knowledge of the fact that the victim is a person who belongs to a scheduled caste and therefore, there is no basis for the allegation made against her. This contention cannot be accepted at this stage. The very fact that the appellant called the victim by his caste name would indicate that the appellant had knowledge of that fact.

14. Learned counsel for the appellant contended that there is no averment in the first information statement that the appellant is a person who does not belong to a scheduled caste and therefore, the offences under the Act are not made out against her. Learned counsel has placed reliance upon the decision of the Apex Court in **Gorige Pentaiah v. State of Andhra Pradesh : (2008) 12 SCC 531** in this regard.

15. In **Gorige Pentaiah** (supra), the Supreme Court has held as follows:

> *"In the instant case, the allegation of respondent No.3 in the entire complaint is that on 27/05/2004, the appellant abused them with the name of their caste. According to the basic ingredients of Section 3(1)(x) of the Act, the complainant ought to have alleged that the accused – appellant was not a member of the Scheduled Caste or a Scheduled Tribe and he (respondent no.3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the accused – appellant was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated*

with intent to humiliate respondent No.3 in a place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law."

(emphasis supplied)

16. However, subsequently, a three-Judge Bench of the Supreme Court has taken the view that the first information report itself need not contain all the ingredients of an offence under the Act. In **Ashabai Machindra Adhagale v. State of Maharashtra : AIR 2009 SC 1973**, the Apex Court has held as follows:

"It needs no reiteration that the FIR is not expected to be an encyclopedia. As rightly contended by learned counsel for the appellant whether the accused belongs to scheduled caste or scheduled tribe can be gone into when the matter is being investigated. ..... After ascertaining the facts during the course of investigation it is open to the investigating officer to record that the accused either belongs to or does not belong to scheduled caste or scheduled tribe".

(emphasis supplied).

17. What follows from the above decision is that, absence of any averment in the first information report regarding the caste of the accused or the victim, is of no consequence. It is a matter of investigation.

18. In the aforesaid circumstances, the learned Sessions Judge has rightly found that the bar under Sections 18 and 18A(2) of the Act interdict the court from granting anticipatory bail to the appellant.

19. However, there is no basis for the finding made by the learned Sessions Judge that it is a case where custodial interrogation of the appellant would be required for the investigation of the case. There is also no basis for the finding made by the learned Sessions Judge that the appellant may influence the witnesses in the case. The victim in the case is a public servant. The other witnesses in the case would be the staff of his office. Possibility of the appellant influencing them is very remote.

20. But, the fact that a person who is accused of an offence under the Act is not entitled to get anticipatory bail does not

mean that he is not entitled to get regular bail. The privilege of pre-arrest bail, in respect of the offences under the Act, is often denied to an accused only for the reason that Sections 18 and 18A of the Act interdict the court from granting that relief. In many cases registered under the Act, custodial interrogation of the accused may not be necessary and there may not be any risk of the accused fleeing from justice. In such cases, but for the bar under the aforesaid provisions of the Act, the court would have exercised the discretion to grant the relief under Section 438 Cr.P.C in favour of the accused. In such cases, nothing prevents the Special Court from granting bail to the accused under Section 437 of the Code, when he is arrested and produced before the court or when he surrenders or appears before the court. The bar under Sections 18 and 18A of the Act will not apply at the stage of consideration of a bail application by the Special Court under Section 437 Cr.P.C.

21. Grant or denial of bail is entirely the discretion of the Judge considering a case. But, reasonableness postulates intelligent care and predicates that deprivation of freedom by

refusal of bail is not for punitive purpose but for the bi-focal interests of justice - to the individual involved and society affected (See **Gudikanti Narasimhulu v. Public Prosecutor : AIR 1978 SC 429**). No court shall refuse bail to an accused for the purpose of giving him a taste of imprisonment as a lesson (See **Sanjay Chandra v. C.B.I : AIR 2012 SC 830**).

22. A humane attitude is required to be adopted by a Judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this, which include, maintaining the dignity of an accused person, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems. The grant or refusal of bail is entirely within the discretion of the Judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and compassionately and in a humane manner (See **Dataram Singh v. State of U.P : AIR 2018 SC 980**).

23. Exercising the power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Detention of the accused shall not be authorised in a routine, casual and cavalier manner. In exercising the power of remanding an accused, which is a judicial act, the court has to satisfy that the materials before it justify such action. The court has to satisfy that remand of the accused is really necessary for a smooth and effective investigation of the case. It is obligatory on the part of the court to apply its mind and not to pass an order of remand in a routine or mechanical manner. In cases where the offence alleged is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine and when the accused is arrested and produced before the court, it has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are protected. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, the court is duty bound

not to authorise the detention of the accused. The court has to satisfy that the condition precedent for arrest under Section 41 of the Code has been satisfied and it is only thereafter that it would authorise the detention of an accused. When a suspect is arrested and produced before the court for authorising detention, the court has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant. The order of the court authorising detention of the accused shall reflect such satisfaction by it (See **Manubhai Ratilal Patel v. State of Gujarat : AIR 2013 SC 313** and **Arnesh Kumar v. State of Bihar : AIR 2014 SC 2756**).

24. Considering the extra-ordinary situation and the health crisis prevailing in the country due to Covid-19 pandemic and with a view to control the spreading of the disease among prisoners, in the order dated 23.03.2020 in **Re : Contagion of Covid 19 Virus**, the Supreme Court had issued various directions to minimise the number of inmates in jails. Taking note of the spirit of the directions of the Supreme Court, the Full Bench of this Court in the order dated 25.03.2020 in **W.P.(C)**

No.9400 of 2020 (Suo Motu), had directed as follows:

> *"Therefore, taking note of the above said situation, we are of the firm view that, right of personal liberty guaranteed under Article 21 of the Constitution of India should not, at any rate, be infringed by arresting an accused, except in matters where arrest is inevitable. However, the State is at liberty to take appropriate decision in respect of heinous/serious offences and in rest of the cases, State may act accordingly.*
>
> *In the event of any arrest, the Constitutional obligation under Article 20(2) shall be followed in letter and spirit. Over-crowding in prisons is one of the issues taken up by the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No.1/2020. Therefore, learned Magistrates/ Judges before whom the accused is produced, depending upon the nature of offence, shall consider as to whether judicial/police custody is required or not. Needless to state that, bail is the rule and jail is an exception. We make it clear that, the above said directions stand excluded to subjects relating public order/law and order and any action taken by the State Government to combat the outbreak of COVID-19 and actions taken thereof".*

25. The restrictions imposed during the lock-down declared in the country with a view to combat Covid-19 have been since lifted to a considerable extent. But, the threat of transmission of the pandemic prevails, may be at a greater level. Therefore, the need to strictly adhere to the directions given by the Apex Court in **Arnesh Kumar** (supra) with regard to remand of accused persons, with a view to minimise the number of inmates in the jail, is now more imperative.

26. In the instant case, all the offences alleged against the appellant are punishable with imprisonment for a term of less than seven years. Therefore, if the investigating officer intends to arrest the appellant in the case, the conditions stipulated by the Apex Court in the decision in **Arnesh Kumar** (supra) would squarely apply.

27. Learned counsel for the appellant prayed that the appellant may be permitted to surrender before the court concerned and seek regular bail. No specific direction or permission in that regard is required to be given to the appellant by this Court.

28. The appeal is liable to be dismissed in the light of the finding that the bar against granting anticipatory bail under Sections 18 and 18A(2) of the Act applies to the facts of the case.

Consequently, the appeal is dismissed.

(sd/-)

R.NARAYANA PISHARADI, JUDGE

jsr

APPENDIX

APPELLANT'S EXHIBITS:

ANNEXURE A1 : TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME 107/2020 OF THRIKKAKARA POLICE STATION DATED 05.03.2020.

ANNEXURE A2: TRUE COPY OF THE FIRST INFORMATION STATEMENT IN CRIME 107/2020 OF THRIKKAKARA POLICE STATION DATED 05.03.2020.

ANNEXURE A3: TRUE COPY OF THE ORDER DATED 16.03.2020 IN CRL.M.C.NO.565/2020 ON THE FILES OF COURT OF SESSION, ERNAKULAM DIVISION.

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

PS TO JUDGE