

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31<sup>ST</sup> DAY OF OCTOBER, 2018

BEFORE

THE HON'BLE MRS.JUSTICE K. S. MUDAGAL

**CRIMINAL PETITION NO.4959 OF 2018**

**BETWEEN**

1. SHASHIDHAR. R  
S/O LATE RAMADAS. H,  
AGED ABOUT 46 YEARS.

2. SMT. PARVATHAMMA  
W/O DODDAKARIYAPPA  
AGED ABOUT 50 YEARS

BOTH ARE RESIDING AT  
SAPTHAGIRI BADAVANE  
SIRA TOWN  
TUMAKURU-572137.

... PETITIONERS

(BY SRI. M. SHASHIDHARA, ADVOCATE)

**AND**

STATE OF KARNATAKA  
BY SIRA P.S. REPRESENTED BY  
SPP, HIGH COURT OF KARNATAKA  
AT BENGALURU-560001.

... RESPONDENT

(BY SMT. NAMITHA MAHESH, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 438 OF CR.P.C. PRAYING TO ENLARGE THE PETITIONERS ON BAIL IN THE EVENT OF THEIR ARREST IN CRIME NO.475/2017 OF SIRA POLICE STATION, TUMAKURU DISTRICT FOR THE OFFENCE P/U/S 323, 324, 504 R/W 34 OF IPC AND SECTION 3(1)(r), 3(1)(s) of SC/ST (POA) ACT.

THIS CRIMINAL PETITION COMING ON FOR *ORDERS*  
THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

Sira Police have charge sheeted the petitioners in Crime No.475/2017 in their Police Station for the offences punishable under Sections 323, 324, 504 read with Section 34 of IPC and Section Sections 3(1)(r), 3(1)(s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which is now pending in Spl.C.C. No. 61/2018 on the file of III Additional District and Sessions Judge, Tumkur.

2. It is alleged that on 05.12.2017 at about 6.30 a.m., in front of the house of the petitioners in Sapthagiri Badavane, Sira Taluk, Tumakuru District, petitioners picked up quarrel with CW-1 and assaulted her and when her son CW-2, went to her rescue, petitioners abused both CW-1 and CW-2 referring to their caste and the first petitioner assaulted CW-2 with cement brick on his left elbow and caused simple injuries.

3. Learned counsel for the petitioners submits that regarding the same incident, the first petitioner has filed complaint in Crime No.474/2017 which is registered for the offences punishable under Sections 323, 324, 448, 504 and 506 read with Section 34 of IPC. He further submits that as counter blast to the first petitioner's complaint, this case is filed subsequently falsely implicating them.

4. Smt. Namitha Mahesh, learned HCGP submits that the case involves the offences punishable under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and therefore, Section 438 Cr.P.C cannot be invoked. The material on record shows that the first petitioner filed the complaint first before the respondent-police. As per the said complaint, CW-2 of this case assaulted the first petitioner and broke one of his teeth. Charge sheet is filed in the same case against CW-1 and CW-2.

5. This Court in CrI.P.4306/2018 dated 28.08.2018 in the case of Nagesh @ Nagesh Reddy Vs.

The State of Karnataka, has held that Section 18(A) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, bars invoking Section 438 of Cr.P.C, if *prime facie* case of intentional insult or abuse based on the caste discrimination is made out.

6. Based on the petitioner's complaint, the case was registered first against the complainant party. Charge sheet records at this stage do not indicate intentional insult or abuse. Investigation has already been completed. The detention of the petitioners is not required for any other purpose. Therefore, it is a fit case to grant anticipatory bail to the petitioners with conditions.

7. The petition is ***allowed***. Petitioners are granted anticipatory bail in Spl.C.C.No.61/2018 on the file of III Additional District and Sessions Judge, Tumkur, subject to the following conditions:

- (i) The petitioners shall appear before the trial Court within *ten* days from the date of receipt of copy of this order.

- (ii) They shall execute personal bond in a sum of Rs.25,000/- (Rupees twenty five thousand only) and furnish *one* surety for the likesum to the satisfaction of the trial Court.
- (iii) They shall not tamper the prosecution witnesses in any manner.

**SD/-  
JUDGE**

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