

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29<sup>TH</sup> DAY OF MARCH, 2019

BEFORE

**THE HON'BLE MR.JUSTICE B.A. PATIL**

CRIMINAL PETITION NO.2037 OF 2019

**BETWEEN:**

Smt. Roopa Lakshmi,  
W/o. Rajiv Lochana,  
Aged about 43 years,  
R/at No.120,  
Doremane, 5<sup>th</sup> Cross, 1<sup>st</sup> Block,  
HMT Layout, near 8<sup>th</sup> Mile,  
Nagasandra,  
Bengaluru – 560 073.

...Petitioner

(By Sri. Kemparaju, Advocate)

**AND:**

1. State of Karnataka  
Bagalagunte Police Station,  
Rep. by SPP,  
High Court of Karnataka,  
Bangalore - 560 001.

2. Sampagiyamma,  
Aged about 34 years,  
No.875/1,  
Muniswamappa Line,  
T. Dasarahalli,  
Bengaluru – 560 057.

...Respondents

(By Sri M. Divakar Maddur, HCGP for R-1  
Sri Danappa P. Panibath, Adv. for R-2)

This Criminal Petition is filed under Section 438 of Cr.PC praying to enlarge the petitioner on bail in the event of her arrest in Crime No.50/2019 registered by Bagalagunte P.S., Bengaluru for the offence punishable under Sections 506, 420 and 504 of IPC and Section 3(1) (r) and 3(r) (s) of SC/ST (POA) Act.

This Criminal Petition coming on for *Orders*, this day, the Court made the following:

### **ORDER**

The present petition has been filed by the petitioner-accused No.2 under Section 438 of Cr.P.C. to release her on anticipatory bail in the event of her arrest in Crime No.50/2019 of Bagalagunte police station, Bengaluru for the offences punishable under Section 506, 420 and 504 of IPC and Section 3(1)(r)(s) of SC/ST (P.A.) Amendment ordinance 2014 Act.

2. I have heard learned counsel for the petitioner-accused No.2 and learned HCGP for the respondent-State.

3. It is alleged that the complainant was working at Vijaya Nursing Home, Dasarahalli since 14 years as receptionist which is owned by the petitioner and her husband. It is further alleged that the complainant sold her ancestral property in the year 2016. After coming to know the said fact, the accused petitioner requested the complainant and his brothers to give a sum of Rs.30 lakhs and accordingly, the said amount was given. It is further alleged that when the complainant asked the petitioner to give back the said money, the accused petitioner told that the said amount is required for the purpose of improvement of the hospital. As the marriage of the complainant was fixed, again she asked to return the money then, they told that they will not return the money. It is further alleged that on 11.12.2018 at about 7.45 p.m., the complainant and her brother went to the said Nursing Home to ask them to return the money. The petitioner-accused by holding complainant's brother's shirt, abused in filthy

language by taking the name of their caste. On the basis of the complaint a case has been registered.

4. It is the submission of learned counsel for the petitioner that though the alleged incident has taken place on 11.12.2018, the complaint came to be registered on 02.02.2019, after lapse of 3 months from the date of the incident. There is an inordinate delay in filing the complaint. He further submitted that the complainant does not belong to any of the reserved caste and the caste certificate which has been produced is obtained subsequently after filing of the complaint. He further submitted that already accused No.1 has been granted bail by the learned Magistrate. On the ground of parity, the accused petitioner is also entitled to be released on bail. He further submits that the complainant was terminated on 09.11.2018 and only because of that reason, the complaint has been registered. He further submitted that the alleged

incident has taken place within the hospital and the said act does not attract the provisions of SC/ST (POA) Act as it is not within the public view. The complainant has put in morethan 14 years of service in the said hospital. No such incident of abusing caste or other circumstances has taken place. Further submitted that the accused petitioner has not involved in the alleged crime. Said return of money and other things are civil litigations. Further submitted that the cheque which has been produced does not bear the signature of accused petitioner. The signature appeared on the cheque is different. Further submitted that there is no prima-facie case under the SC/ST (POA) Act and as such, the provisions of Section 438 can be exercised and the accused petitioner can be ordered to be enlarged on bail. On these grounds he prays to allow the petition and to release the accused petitioner on bail.

5. Per contra, learned HCGP vehemently argued and submitted that there is prima-facie material as against the petitioner accused for having involved in the serious offence which is punishable under SC/ST (POA) Act. There are eye witnesses to the alleged incident. They have also categorically stated that the accused petitioner by taking the name of caste, they have abused. Further submitted that there is a bar under Section 18A of SC/ST (POA) Act to release the accused petitioner on anticipatory bail. Further submitted that Rs.30 lakhs has been taken from the complainant and when the same was asked to be returned, at that time, the petitioners have abused by taking the name of their caste. Under the facts and circumstances, the petitioner has not made out any good grounds to release her on anticipatory bail. On these grounds, he prays to dismiss the petition.

6. Learned counsel appearing on behalf of the complainant vehemently argued and supported the arguments of learned HCGP and submitted that there is a clear bar under Section 18 of SC/ST (POA) Act to grant the anticipatory bail and as such he prays to dismiss the petition.

7. I have carefully and cautiously gone through the submissions of learned counsel appearing for the parties and perused the records.

8. On close reading of the contents of the complaint and other material, the complainant was working as receptionist since 14 years in the hospital of the accused-petitioner. It is further alleged in the complaint that she sold the property in the year 2016 for a sum of Rs.30 lakhs and the said amount of Rs.30 lakhs was given to the accused petitioner for development of the hospital. The serious allegation is that when she asked to return the said amount, at that

time, the accused petitioners abused by taking the name of the caste. The alleged incident has taken place on 11.12.2018 at about 7.45 p.m. and the complaint came to be registered on 02.02.2019. There is delay of 53 days in filing the complaint. Even I am conscious of the fact that there is a bar under Section 18 of SC/ST (POA) Act to release the accused petitioner on bail. However, the Hon'ble Apex Court in the case of ***Dr.Subhas Kashinath Mahajan V/s State of Maharashtra and another reported in 2018 (6) SCC 454***, it has been observed that there is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima-facie malafide. Under such circumstances, the Court can exercise the power under Section 438 of Cr.P.C., and can grant anticipatory bail.

9. Keeping in view the above said proposition of law and even the entire contents of the complaint and other material is looked into, if really the alleged incident has taken place as contended by the complainant, she could have filed the complaint immediately. She has not filed the complaint on the date of the alleged incident, the complaint was registered only on 02.02.2019, that itself clearly goes to show that the said case has been registered after due deliberations and discussions. Under the facts and circumstances, I feel that the said proposition of law is applicable to the present case on hand. There is no prima-facie case made out by the complainant to show that the accused petitioner has abused on that day by taking the name of the caste. If really it was the incident then, without there being any delay, the complainant would have filed the complaint.

10. Be that as it may. Even the records also indicate that she was terminated from the service on 09.12.2018 and the alleged incident has taken place on 11.12.2018 that also creates doubt. In that light also, there is no prima-facie material. Therefore, I held that there is no bar to grant anticipatory bail. The alleged offence is not punishable with death or imprisonment for life. Hence, the accused petitioner is entitled to be released on bail.

In the light of the discussions held above, the petition is ***allowed*** and the petitioner accused is ordered to be enlarged on bail in Crime No.50/2019 of Bagalugunte Police Station, Bengaluru for the offence punishable under Sections 506, 420 and 504 of IPC and Section 3(1)(r)(s) of SC/ST (P.A.) Amendment ordinance 2014 Act, subject to following conditions:

1. The Petitioner-accused shall execute a personal bond for a sum of Rs.2,00,000/-(Rupees Two

lakhs only) with two sureties for the likesum to the satisfaction of the trial Court.

2. She shall not tamper with the prosecution evidence directly or indirectly and she shall not threaten the prosecution witnesses.
3. She shall not leave the jurisdiction of the Court without prior permission.
4. She shall surrender before the Investigating Officer within 15 days from today.
5. She shall mark her attendance once in a month on every first till charge sheet is filed.

In view of disposal of main petition, I.A.No.1/2019 does not survive for consideration. Accordingly, I.A.No.1/2019 is disposed of.

**Sd/-  
JUDGE**

PN/-