

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29<sup>TH</sup> DAY OF MAY 2020

BEFORE

THE HON'BLE MR.JUSTICE SREENIVAS HARISH KUMAR

**CRIMINAL PETITION No.1155/2020**

**BETWEEN:**

1. Sri Jayaramappa  
S/o late Munishamappa  
Aged about 70 years  
Occ: Agriculturist
2. Sri Chandrashekar  
S/o Jayaramappa  
Aged about 38 years  
Occ: Agriculturist
3. Sri Shashikumar  
S/o Jayaramappa  
Aged about 35 years  
Occ: Agriculturist
4. Smt. Lakshamma  
W/o Jayaramappa  
Aged about 65 years  
Occ: House Wife

Petitioner Nos.1 and 4 are  
R/at Sadapanahalli Village  
Sulibele Hobli  
Hoskote Taluk-562114  
Bangalore Rural District.

...Petitioners

(By Sri A. Ramesh Gowda, Advocate for P1 & P4)

**AND:**

1. State by Sulibele Police Station  
Rep by SPP  
High Court of Karnataka  
Bangalore-01.
2. Sri Narayanaswamy  
S/o late Hucheerappa  
Aged about 68 years  
R/at Sadappanahalli Village  
Sulibele Hobli  
Hoskote Taluk-562114  
Bangalore Rural District.

...Respondents

(By Sri P. Thejesh, HCGP for R1  
R2 – Served - unrepresented)

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 Cr.No.02/2020 registered by Sulibele Police Station, Bengaluru District for the offence punishable under Sections 323, 324, 504, 354, 506 read with Section 34 of IPC and Section 3(1)(r)(s)(w) of SC/ST (POA) Act and etc.,

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

### **ORDER**

This petition is filed under Section 438 of Cr.P.C. The learned counsel for the petitioners submits that this petition is pressed only in respect of petitioner Nos.1 & 4, for Petitioner Nos.2 & 3 applied to the Court under Section 439 of Cr.P.C. and obtained bail.

2. Heard the learned counsel for petitioner Nos.1 & 4 and the learned High Court Government Pleader for respondent No.1. The second respondent/complainant is notified.

3. The petitioners' counsel is questioned as regards the maintainability of the case in the light of Sections 18 & 18A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 (herein after referred as "Act" for short). It is his submission that plain reading of the complaint does not indicate prima facie case. The FIR shows longstanding civil dispute between the complainant and the petitioners. The alleged incident that took place on 06.01.2020 did not take within the public view. Except the allegation that the petitioners took the name of the caste of the complainant, nothing is there to show that the petitioners intentionally insulted the complainant and his family members taking the name of his caste and hence there is no bar for granting anticipatory bail.

4. Learned High Court Government Pleader submits that reading of the complaint makes it very clear that there are caste based allegations and the petitioners took the name of the caste

while quarreling and therefore anticipatory bail cannot be granted. The charge sheet has already been filed. The petitioners can move the Special Court under Section 439 of Cr.P.C.

5. Section 18 of the Act does not permit granting of anticipatory bail in respect of complaint made under provisions of the Act. The Hon'ble Supreme Court in the case of ***Prithviraj Chauhan vs Union of India [2020 SCC (Online) SC 159]*** has clearly held that anticipatory bail cannot be granted in respect of cases registered under the provisions of the Act. However it has made very clear that where there is no prima-facie case, the anticipatory bail can be granted depending upon the circumstances. The observation made by the Hon'ble Supreme Court is as follows : -

*“10. Concerning the applicability of provisions of section 438 Cr.P.C, it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A (i) shall not apply. We have clarified this aspect while deciding the review petitions.”*

6. In this case from the allegations made in the First Information Report, it becomes clear that there is a longstanding civil dispute between the petitioners and the complainant. Further allegation is that on 06.01.2020, in the guise of driving away the Chicken cubs, the fourth petitioner Lakshamma threw the stone at them, but one stone fell on the roof of the house of the complainant. Hearing the sound, the complainant's wife and son came out and questioned the fourth petitioner. It is stated that she abused them taking the name of their caste and at about 4.30 p.m. on the same day, the other petitioners assaulted the complainant and his son with iron rods causing injuries.

7. There is nothing to show that the petitioner Nos.1 and 4 had intention to insult the complainant and his family members as they belong to scheduled caste. It appears that whole incident might have taken place in the background of civil dispute that exists between them.

8. Though it is written in the First Information Report that the petitioners took the name of the caste of the complainant, veracity in such allegations is to be proved before the Court. At this

stage, I do not find any caste based attack. The main requirement is intention to insult a member of scheduled caste or scheduled tribe within public view. The complaint must disclose insultation and humiliation of a scheduled caste or scheduled tribe; an incident in relation to which an FIR can be registered under the provisions of IPC does not permit the police to register a complaint under the provisions of the Act unless the incident as a whole can be said to be caste based. Thus viewed I do not find existence of prima facie case attracting the offences punishable under section 3(1)(r)(s) and 3(1)(w) of the Act. Only offences punishable under sections 323, 324, 504, 354 and 506 of IPC are made out. The petitioners are permanent residents of Sadappanahalli and their presence before the court can be secured always and moreover petitioner No.4 is a woman. Hence, this petition can be allowed.

### **ORDER**

The petition in respect of petitioner Nos.1 and 4 is allowed.

In the event of their arrest in Crime No.02/2020 registered by the respondent-police, they shall be released on bail by obtaining from each of them a bond for a sum of Rs.1 lakh with

two sureties for the likesum to the satisfaction of the investigating officer and subject to the following conditions:

1. They shall appear before the trial court regularly till trial is completed.
2. They shall not threaten the witnesses and tamper with evidence.
3. They shall not commit any offence.

**Sd/-  
JUDGE**

rv/KTY