

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 31ST DAY OF MAY, 2022

BEFORE

THE HON'BLE MRS.JUSTICE M.G. UMA

CRIMINAL APPEAL NO.200088/2022

Between:

1. Panduranga S/o Thippayya,
Age: 56 years, Occ: Business,
R/o Daddy Colony, Raichur,
Dist. Raichur-584 101.
2. Swapna W/o N.Venkatesh,
Age: 32 years, Occ: Household work,
R/o Ramlingeshwar Layout,
I.B.road, Dist. Raichur-584 101.
3. Venkatesh S/o G.Gopal,
Age: 38 years, Occ: Business,
R/o Ramlingeshwar Layout, I.B.Road,
Dist. Raichur-584 101.
4. M.Venkatesh S/o Thippayya,
Age: 62 years, Occ: Business,
R/o Ramlingeshwar Layout, I.B.Road,
Dist. Raichur-584 101.
5. Karthik S/o M.Venkatesh,
Age: 29 years, Occ: Business,
R/o Ramlingeshwar Layout, I.B.Road,
Dist. Raichur-584 101.

... Appellants

(By Sri. Sachin M. Mahajan, Advocate)

And:

1. The State of Karnataka
Through S.H.O., West Police Station,
Raichur, Dist. Raichur.
Represented by Additional S.P.P.
Hon'ble High Court of Karnataka
Bench at Kalaburagi-585 103.
2. Smt. Devi W/o Prashanth,
Age: 30 years, Occ: Household work,
R/o H.No.1-3-573/161,
Station Area Layout, Lambani Colony,
Raichur, Dist. Raichur-584 101.

... Respondents

(By Sri. H.S.Shankar, HCGP for R1
By Sri. Bheemaraya M.N., Advocate for R2)

This Criminal Appeal is filed under Section 14A of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act, praying to allow the appeal and order for release of the appellants who are accused No.1 to 3 and 5 to 6 on bail in the event of their arrest in Spl. Case (A) No.442/2022 pending on the file of the Special Court for cases under SC & ST (PoA) Act and I Additional Sessions Judge, Raichur, arising out of Crime No.08/2022 of West police station, Raichur for the alleged offence punishable under Section 143, 147, 324, 307, 354, 504, 506, 326 and Sec. 149 of IPC and Sec.3(1)(r)(s)(w-i), 3(2)(v-a) of the SC & ST Prevention of Atrocities Amendment Act, 2015.

This appeal coming on for Admission this day, the Court delivered the following:

JUDGMENT

The appellants-accused No.1, 2, 3, 5 and 6 are before this Court seeking grant of bail under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act' for short) in the event of their arrest in Crime No.8/2022 of West Police Station, Raichur, pending before the Special Court and I Additional Sessions Judge, Raichur, in Spl.Case (A) No.442/2022 registered for the offences punishable under Sections 143, 147, 324, 307, 354, 504, 506 326 r/w section 149 of the Indian Penal Code (for short 'IPC'), and under Sections 3(1)(r), 3(1)(s), 3(1)(w)(1), 3(2)(v-a) of the Act, on the basis of the first information lodged by informant-Shashikala.

2. Heard Sri Sachin M. Mahajan, learned Counsel for the appellants and Sri H.S.Shankar, learned High Court

Government Pleader for the respondent No.1-State.
Perused the materials on record.

3. Learned Counsel for the appellants submitted that the appellants are arrayed as accused No.1, 2, 3, 5 and 6. They have been falsely implicated in the case without any basis. The complainant Smt. Devi lodged a private complaint on 17.04.2021 alleging commission of the offence by accused Nos.1 to 6 on 20.03.2021. There is inordinate delay in lodging the complaint which has not been explained properly. It is stated that accused Nos.1, 2, 3 and 4 assaulted the complainant and thrown her on the road. Even though they were knowing that complainant was six months' pregnant and caused injuries to her. It is also stated that accused No.1 assaulted with a spade and caused grievous bleeding injuries. But the wound certificate relating to the complaint does not support such contention.

4. Learned counsel for the appellants submits that there is dispute between the injured Shashikala and

the accused Nos.5 and 6 in respect of a residential house No.1-4-88/157A-1 situated at Raichur. A suit in O.S.No.72/2020 was filed by the said Shashikala against accused Nos.5 and 6 seeking declaration and injunction. Temporary injunction was refused by the Trial Court. The said suit is still pending. In the meantime, only to pressurize the accused, the said Shashikala lodged a similar private complaint in PCR No.105/2020 making allegations against accused for the offences punishable under Sections 143, 147, 341, 447, 384, 504, 506, 511 r/w 149 of IPC. In the said complaint, present complainant Smt. Devi and one Mohd.Rafi are cited as witnesses. In the present complaint, the complainant Smt.Devi has filed the complaint citing Shashikala, who is the complainant in PCR No.105/2020, and very same Mohd.Rafi as witnesses. Again the dispute in the present complaint is also with respect to plot No.1-4-88/157A-1 belonging to Shashikala in respect of which there is dispute between her and accused Nos.5 and 6. Therefore, it is a clear case of abuse

of process of law and the complainant is making use of the provisions of special enactment.

5. Learned counsel also submitted that accused No.4 was also apprehended and detained in custody. The wound certificate discloses that Shashikala sustained only one simple injury whereas Smt. Devi had tenderness in abdomen and she was discharged from the hospital within two days. She had not sustained grievous injuries as tried to be made out in the complaint. Learned counsel for the appellants also submitted that appellants are not required for custodial interrogation or for any other purpose. They are ready and willing to co-operate with the Investigating Officer.

6. Learned counsel placed reliance on the decision of the Hon'ble Apex Court in the case of ***Prithvi Raj Chauhan vs. Union of India***¹ to contend that there is no absolute bar for grant of anticipatory bail where the

¹ AIR 2020 SC 1036

provisions of special enactment are invoked. Accordingly, he prays for allowing the petition in the interest of justice.

7. *Per contra*, learned High Court Government Pleader for respondent No.1 opposing the appeal submitted that serious allegations are made against the appellants for having committed the offence. These appellants are absconding since the date of registration of case. The complainant had specifically stated regarding the overt act committed by each of the accused. The wound certificate of the injured discloses that she has sustained one grievous injury and witness Shashikala sustained simple injury. The provisions of special enactment is invoked, there is clear bar for grant of anticipatory bail and therefore, prays for dismissal of the appeal.

8. In view of the rival contentions urged by the learned counsel for both the parties, the point that would arise for my consideration is:

"Whether the appellants are entitled for grant of bail under Section 14-A of SC/ST (Prevention of Atrocities) Act, 1989?"

My answer to the above point is in 'Affirmative' for the following:

R E A S O N S

9. The allegations made against the appellants - accused are of serious nature. The complainant had made specific allegations against accused for having committed the offence. She has stated in the complaint that witness Shashikala and accused Nos.5 and 6 are having dispute with regard to plot No.1-4-88/157A-1 and a suit is filed in that regard by the said Shashikala who is cited as witness No.1 in the present case. It is stated that on 20.03.2021 at about 11.30 a.m., when the complainant along with her friend Shashikala went to the said plot, along with labours for construction of shed, accused Nos.1 to 4 came to the spot and abused them in filthy language and committed offence. It is stated that complainant was physically lifted by accused Nos.1, 2, 3 and 4 and thrown on the road, even after knowing that she is pregnant for six months. Similarly accused No.1 assaulted Shashikala with a spade

on her head and caused heavy bleeding injury. But the wound certificate discloses that Shashikala has sustained only a simple injury, i.e., cut lacerated wound measuring 7x0.5x1cm over right frontal region. Whereas wound certificate pertaining to the complainant discloses that she has sustained one grievous injury i.e., tenderness over the abdomen and she was discharged from the hospital on 22.03.2021. Nature of the injuries mentioned in the wound certificate discloses that there is some exaggeration in alleging commission of offence by the accused.

10. Learned counsel for the appellants produced copy of the private complaint in PCR No.105/2020 which is pending on the file of II Additional Civil Judge and JMFC, Raichur, registered in C.C.No.2466/2020 filed by Shashikala Patil against accused No.3 and others. In the said complaint, the present complainant - Smt.Devi is cited as witness along with Mohd.Rafi who is also cited as witness in the present case. Similar allegations are made against accused in the said complaint. It was also in

respect of the site bearing No.1-4-88/157A-1. It is stated that a civil suit is also pending in that regard in the civil Court. All these materials disclose that there is civil dispute between Shashikala and accused Nos.5 and 6 in respect of the site in question. Two different private complaints are filed, one by Shashikala citing Smt. Devi and Mohd.Rafi as witnesses. In the present complaint Smt. Devi cited Shashikala and Mohd. Rafi as witnesses. There is *prima facie* exaggeration in explaining the overt act committed by the accused and causing injuries. The nature of allegations made do not require these appellants for custodial interrogation. Even though. there is bar for grant of anticipatory bail when provisions of special enactment are invoked, learned counsel for the appellant places reliance on the decision in ***Prithvi Raj Chouhan*** (supra) case which held in paragraph 31 and 32 as under:

"31. As far as the provision of Section 18A and anticipatory bail is concerned, the judgment of Mishra, J., has stated that in cases where no prima facie materials exist

warranting arrest in a complaint, the Court has the inherent power to direct a pre-arrest bail.

32. *I would only add a caveat with the observation and emphasize that while considering any application seeking pre-arrest bail, the High Court has to balance the two interests, i.e., that the power is not so used as to convert the jurisdiction into that under Section 438 of the Criminal Procedure Code, but that it is used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR and further also that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. I consider such stringent terms, otherwise contrary to the philosophy of bail, absolutely essential, because a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament."*

(emphasis supplied)

11. In the present facts and circumstances of the case, it disclose that there are no *prima facie* material

against accused which requires arrest of the accused. The refusal of grant of anticipatory bail would definitely lead to miscarriage of justice. Admittedly, there is a civil dispute pending and a complaint was earlier filed by Shashikala making similar allegations against accused. Therefore, I am of the opinion, that the appellants may be granted anticipatory bail subject to conditions which will take care of the interest of the prosecution as well as interest of the complainant and the witnesses.

12. Accordingly, I answer the above point in the affirmative and proceed to pass the following:

ORDER

The appeal is ***allowed***.

The appellants are ordered to be enlarged on bail in the event of their arrest in Spl.Case(A)No.442/2022 (Crime No.8/2022) of Raichur West Circle Police Station, Raichur.

The appellants are directed to appear before the Investigating Officer within 15 days from the date of

receipt of this order and on their appearance, the Investigating Officer shall enlarge them on bail subject to the following conditions:-

- a. The appellants shall furnish the bonds in a sum of Rs.2,00,000/- (Rupees Two Lakhs only) each with two sureties each for the likesum to the satisfaction of the Investigating Officer;
- b. The appellants shall not commit similar offences;
- c. The appellants shall appear before the Investigating Officer or the court as and when required; and
- d. The appellants shall not threaten or tamper the prosecution witnesses.

On furnishing the sureties by the appellants, the Investigating Officer is at liberty to verify the correctness of the addresses and authenticity of the documents furnished by them. On satisfaction of the said documents, he may proceed to accept the sureties within a reasonable time.

**Sd/-
JUDGE**