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BACHU DAS

v.

STATE OF BIHAR AND OTHERS
(Criminal Appeal No. 314 of 2014)

FEBRUARY 03, 2014

[P. SATHASIVAM, CJI AND RANJAN GOGOI, J.]

Code of Criminal Procedure, 1973: s.438 - Anticipatory bail - Complaint u/s.3 of SC/ST Act and ss.147, 148, 149, 323, 448 IPC - Order of Sessions Judge that on perusal of complaint and statement of witnesses examined during enquiry, prima facie case made out against accused under the alleged offences - However, grant of anticipatory bail by High Court - On appeal by complainant, held: The scope of s.18 of the SC/ST Act r/w s.438 of the Code is such that it creates a specific bar in the grant of anticipatory bail - When an offence is registered against a person under the provisions of the SC/ST Act, no court shall entertain an application for anticipatory bail, unless it prima facie finds that such an offence is not made out - In the light of order of sessions judge and statutory provision, the High Court has committed error in granting Anticipatory bail - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - s.3.

Vilas Pandurang Pawar and Anr. vs. State of Maharashtra and Ors. 2012 (7) SCC 795 - relied on.

Case Law Reference:

2012 (7) SCC 795 **relied on** **para 8**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 314 of 2014.

From the Judgment and Order dated 05.05.2010 of the High Court of Judicature at Patna in Cr. Misc. No. 16213 of 2010.

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A Anuj Prakash, Samir Ali Khan for the Appellant.

Gopal Singh, Manish Kumar, Ravi Shankar Kumar, B.K. Choudhary, Nitin Kumar Thakur for the Respondents.

The following Order of the Court was delivered by

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O R D E R

1. Heard all the parties concerned.

2. Leave granted.

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3. The complainant, aggrieved by the impugned order of the High Court dated 5th May, 2010, granting anticipatory bail to the respondent Nos.2 to 8 (accused Nos.1 to 7), has filed the above appeal.

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4. Learned counsel for the appellant by drawing our attention to the relevant materials, namely, the complaint, the statement of the complainant and four witnesses, as well as the relevant provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for short 'the SC/ST Act'), submitted that the High Court is not justified in granting anticipatory bail, particularly, in the light of the factual conclusion arrived at by the Sessions Judge, Saran at Chapra, Bihar on 28th November, 2008.

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5. The learned counsel appearing for the State supported the claim of the appellant.

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6. Learned counsel appearing for the respondents/accused submitted that from the day, namely, 26th February, 2010, when the High Court granted anticipatory bail to these persons, no untoward incident occurred and cooperated with Investigating Officer. He also brought to our notice the earlier order of the High Court dated 26th February, 2010, wherein it is mentioned that there is serious land dispute between the parties and use of filthy language by cast name, is unacceptable. Relying on this order, the counsel for the accused submitted that no interference is called for in the order passed by the High Court.

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7. As rightly pointed out by the learned counsel appearing

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for the appellant/complainant, in the order dated 28th November, 2008, the learned Sessions Judge, Saran at Chapra, after taking note of all the materials, has concluded as under: A

"Having considered the submissions urged at the bar, going through the impugned order and L.C.R. and finding that the learned Magistrate after perusal of complaint petition, statement of complainant and of four witnesses examined during enquiry has come to the conclusion that against the accused persons offence u/s 147/148/149/323/448 of the I.P.C. and u/s 3 of the S.C. and S.T. Act is made out which appears quite legal, proper and correct one. At this stage the Magistrate is required only to see as to whether on the basis of the materials available on the record *prima facie* case is made out or not? I have also perused the materials placed on the record and the Court is of the opinion that against the accused persons *prima facie* case as found by the learned Magistrate is made out and the accused persons have rightly been summoned. In the result finding no merit in this Criminal Revision the same is hereby dismissed." B C D

8. It is clear that the learned Magistrate carefully perused the complaint petition, as well as the statement of the complainant and four witnesses examined during enquiry and arrived a *prima facie* conclusion against the accused persons that offence under Sections 147, 148, 149, 323, 448 I.P.C. and Section 3 of the SC/ST Act, is made out. In such circumstance and in view of the bar under Section 18 of the SC/ST Act, the learned counsel relying on the decision of this Court reported in (2012) 7 SCC 795 [*Vilas Pandurang Pawar and Another v. State of Maharashtra and Others*], submitted that the High Court is not justified in granting anticipatory bail. In similar circumstance, this Court has considered the offence under Section 3(1), as well as the bar provided under Section 18 of the SC/ST Act and concluded as under: E F G

"Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST H

A Act has been prima facie made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail.

B The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no court shall entertain an application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. The court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence."

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E 9. In the light of the factual details, as found in the order of the learned Sessions Judge, Saran at Chapra, dated 28th November, 2008, and in the light of the statutory provision as interpreted by this Court in the above cited decision, we are satisfied that the High Court has committed an error in granting anticipatory bail. Accordingly, the said order is set aside. The respondent Nos.2 to 8/accused are granted four weeks' time from today to surrender before the appropriate Court and seek for regular bail.

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G 10. It is made clear that we have not gone into the merits of their claim and it is open to the respondents/accused to put forth their stand, including their claim that during the interregnum period, namely, 26.02.2010, the date on which the High Court has granted the anticipatory bail and till today, no untoward incident occurred at their instances.

11. With the above observation, the appeal is allowed.

H D.G.

Appeal allowed.