



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

MONDAY, THE 22ND DAY OF JANUARY 2024 / 2ND MAGHA, 1945

CRL.A NO. 1752 OF 2023

CRIME NO.450/2023 OF Chittarikal Police Station, Kasargod

AGAINST THE ORDER/JUDGMENT CRMC 159/2023 OF DISTRICT

COURT & SESSIONS COURT, KASARAGOD

APPELLANT/ACCUSED:

SHERLY JOSEPH
AGED 55 YEARS
W/O.JOLLY GEORGE, KALAMBUKATTIL HOUSE,
NARAKILAKKAD, KOTTAMALA P.O., VELLARIKUNDU
TALUK, KASARGOD DISTRICT, PIN - 671314
BY ADVS.
S.RAJEEV
V.VINAY
M.S.ANEER
PRERITH PHILIP JOSEPH
ANILKUMAR C.R.
K.S.KIRAN KRISHNAN

RESPONDENT/S:

- 1 STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, PIN - 682031
- 2 STATION HOUSE OFFICER
CHITTARIKKAL POLICE STATION, (CRIME NO.450/2023
OF CHITTARIKKAL POLICE STATION, KASARGOD
DISTRICT), PIN - 671326
- 3 ARJUN P. R
AGED 12 YEARS
S/O. RANJITH V M, PUTHIYA KOOTTATHIL HOUSE,
ECHIPOYIL, WEST ELERI VILLAGE
BY ADV P.K.SANTHAMMA
G SUDHEER, PP

THIS CRIMINAL APPEAL HAVING COME UP FOR
ADMISSION ON 22.01.2024, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:



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K. BABU, J

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Dated this the 22nd day of January, 2024

JUDGMENT

The challenge in this Criminal Appeal filed under Section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for short 'SC/ST (PoA) Act') is to the order dated 13.11.2023 in Crl.M.C.No,159 of 2023, dismissing the application seeking anticipatory bail by the Sessions Court Kasaragod.

Facts

2. The appellant is the Headmistress of Kottamala MGM UP School in Kasaragod District. Victim is a 5th Standard student in the school. The victim filed a complaint alleging the following:-

On 19.10.2023 at 9.40 a.m., while the he was attending the morning school assembly, the appellant, using a scissors cut his hair in the presence of teachers and



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students. When he returned to his class, the students in the class mocked and insulted him. During the lunch break, he met his mother who was working in the nearby property. He went along with his mother. He did not disclose the incident to his mother. After the incident, the victim showed reluctance to attend the school. He belongs to Scheduled Tribe. The appellant belongs to Christian Community. The appellant committed the above acts with the knowledge that the victim belonged to the Scheduled Tribe Community.

3. Based on the complaint dated 28.10.2023 lodged by the victim, Chittarikkal Police registered FIR No.450/2023 alleging the offences punishable under Section 341 of IPC, Sections 3(1)(e) and 3(2)(v)(a) of the SC/ST (PoA) Act and Section 75 of Juvenile Justice (Care and Protection of Children) Act, 2015, (For short 'JJ Act'). The appellant filed application seeking anticipatory bail before the Sessions Court. The Sessions Court held that the prosecution failed to *prima facie* establish the



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offences under the SC/ST (PoA) Act. However, the Sessions Court found that there is strong *prima facie* case to attract the offence punishable under Section 75 of the JJ Act and held that the appellant is not entitled to anticipatory bail.

4. Heard Shri. S. Rajeev, the learned Counsel for the appellant, Smt. P.K. Santhamma, the learned counsel appearing for the victim and Shri. G. Sudheer, the learned Special Public Prosecutor.

5. The learned counsel for the appellant contended that the appellant has not committed any act intentionally which is derogatory to the dignity of the child/victim. The learned counsel submitted that the petitioner having disciplinary control over the victim attempted to enforce discipline to shape up his character and growth. It is further submitted that even if it is found that the acts of the appellant caused hurt to the victim, it was not intentional. The learned counsel for the appellant submitted that rivalry among aided schools also



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resulted in the lodging of complaint by the victim. The counsel submitted that the appellant had been taking earnest efforts to foster the students though she would enforce discipline to shape up their character and ordinary growth and that every thing she did was for the betterment and future welfare of the children. The younger sister of the victim was a student in the school. In 2022, she remained absent for many days. Teachers under the leadership of the appellant went to her house and took her to the school. In the case of the victim also, when he failed to attend the school for some time the appellant went to his house and talked to his mother and persuaded him to attend the classes. The learned counsel for the appellant relied on the proceedings of the Manager of the school containing the finding of the Committee which enquired into the complaint levelled against the appellant. The Committee found that the appellant has not committed any acts as alleged. The learned counsel also relied on the representations



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submitted by the PTA before the educational authorities stating that the overt acts alleged against the appellant are false and that the complaint was triggered by extraneous elements. The learned counsel also relied on the representations submitted by the office bearers of the school parliament before the AEO, Chittarikkal, narrating that no incidents as alleged by the victim happened.

6. The learned counsel appearing for the victim submitted that there are materials to prima facie attract the offences under Section 3(1)(e) and 3(2)(v) of the SC/ST (PoA) Act. The learned counsel submitted that the act of the appellant is derogatory to human dignity. The learned counsel further submitted that the appellant is a highly influential person. It is the contention of the learned counsel that the victim and his sisters suffered mental frustration due to the acts of the appellant and she pleaded that the appellant committed the above acts knowing well that the victim was hailing from a poor Scheduled Tribe community.



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7. The learned Public Prosecutor submitted that the prosecution could place materials to attract the offences under Section 3(1)(e) and 3(2)(v) of the SC/ST (PoA) Act. It is further submitted that the custodial interrogation of the appellant is required. The learned Public Prosecutor submitted that the weapon allegedly used by the appellant is to be recovered for which the custodial interrogation of the appellant is required.

8. The prosecution was initiated based on the statement given by the victim on 28.10.2023. He made the following allegations:- “Shirly teacher is a Christian. Teacher knew that I belong to Malavettuva Community. Teacher forcefully cut my hair while I was attending morning school assembly with intent to insult me.” The victim reiterated this allegation while giving statement under Section 161 Cr.P.C. The mother of the victim also supported the version of the victim. The learned Sessions Judge after considering the above statements and all other circumstances held that the appellant had no



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necessary *mens rea* in the commission of alleged acts. The Sessions Judge has noted that none of the colleagues of the appellant supported the version of the victim.

9. There is a delay of ten days in lodging the complaint. The appellant has placed materials to show that she has been genuinely interested in the welfare of the children. There are materials to show that when the victim and his sister regularly absented from the school, it was the appellant who brought them back.

10. A fundamental principle of criminal jurisprudence with regard to the liability of an accused is the element of *mens rea*. On the principles of *actus reus* and *mens rea*, the learned author Sri.Glanville Williams in the 'Textbook of Criminal Law' [Third Edition, Dennis.J.Baker, page 95] comments thus:

“The mere commission of a criminal act (or bringing about the state of affairs that the law provides against) is not enough to constitute a crime, at any rate in the case of the more serious crimes. These generally require, in addition, some element of



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wrongful intent or other fault. Increasing insistence upon this fault element was the mark of advancing civilization.”

11. On the principles of Criminal Liability, the learned author Sri.K.D. Gaur in his book Criminal Law [Lexis Nexis, Butterworths, page 37] explains thus:

“Criminal guilt would attach to a man for violations of criminal law. However, the rule is not absolute and is subject to limitations indicated in the Latin maxim, *actus non facit reum, nisi mens sit rea*. It signifies that there can be no crime without a guilty mind. To make a person criminally accountable, it must be proved that an act, which is forbidden by law, has been caused by his conduct, and that the conduct was accompanied by a legally blameworthy attitude of mind. Thus, there are two components of every crime, a physical element and a mental element, usually called *actus reus* and *mens rea* respectively.”

12. On an analysis of the facts placed before this Court, I am of the view that the *mens rea* of the appellant in the commission of the alleged acts is doubtful. At the most, it could be seen that the appellant being a school



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teacher having disciplinary control over the victim exceeded in the corporal punishment on the victim. Therefore, I am of the view that there is no *prima facie* material to attract the offences under the SC/ST (PoA) Act.

13. Now what remains is the offence punishable under Section 75 of the JJ Act. In the alleged commission of offence under Section 75 of the JJ Act also, the appellant could place material before the Court which create doubt regarding her *mens rea* in the commission of the offence.

14. While considering the scope of jurisdiction under Section 438 Cr.P.C., the Constitution Bench of the Apex Court in ***Gurbaksh Singh Sibbia & Ors. v. State of Punjab*** [(1980) 2 SCC 565] held thus:

“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a



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direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in *State v. Captain Jagjit Singh* [AIR 1962 SC 253 : (1962) 3 SCR 622 : (1962) 1 Cri LJ 216] , which, though, was a case under the old Section 498 which



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corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.”

15. In ***Siddharam Satlingappa Mhetre v. State of Maharashtra*** [(2011) 1 SCC 694] the Apex Court held thus:-

“113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the B.A.Nos.5010 of 2021 & Connected cases 40 accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.”



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(In ***Sushila Aggarwal v. State (NCT of Delhi)*** [(2020) 5 SCC 1]) the declaration of law in Siddharam Satlingappa Mhetre that no condition can be imposed while granting order of anticipatory bail alone was overruled)

16. In ***Sushila Aggarwal***, the Constitution Bench of the Apex Court, following the decision in Gurbaksh Singh Sibbia, held that while considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc.

17. The prosecution has no case that the appellant is absconding. There are no materials to show that the appellant attempted to influence the course of investigation or tamper with the evidence.

18. Having considered the entire circumstances on the touch stone of the precedents mentioned above, I am



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of the view that the appellant is entitled to anticipatory bail. In the result,

- (i) The Crl. Appeal is allowed.
- (ii) The order dated 13.11.2023 dismissing Crl.M.C.No,159 of 2023 stands set aside.
- (iii) The appellant shall appear before the Investigating Officer on 27.01.2024 between 10.00 AM and 11.00 AM for interrogation.
- (iv) The Investigating Officer is directed to release the appellant on bail, in the event of her arrest, on her executing bond for Rs.1,00,000/- (Rupees One Lakh only) each with two solvent sureties for the like sum.
- (v) The appellant shall not influence the witnesses in this case or tamper with the evidence.



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(vi) She shall fully co-operate with the investigation, including subjecting herself to `deemed custody', as observed in ***Gurbaksh Singh Sibbia & Ors. v. State of Punjab*** [(1980) 2 SCC 565] and ***Sushila Aggarwal & Others v. State (NCT of Delhi) and Ors.*** (AIR 2020 SC 831), for the purpose of discovery or identification, if any.

Sd/-
K.BABU, JUDGE

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APPENDIX OF CRL.A 1752/2023

PETITIONER ANNEXURES

- ANNEXURE I A COPY OF THE FIRST INFORMATION REPORT ALONG WITH FIRST INFORMATION STATEMENT IN CRIME NO.450/20253 OF CHITTARIKKAL POLICE STATION, KASARGOD
- ANNEXURE II THE CERTIFIED COPY OF THE ORDER PASSED BY THE SESSIONS JUDGE, KASARGOD, IN CRL MC NO.159/2023 IN CRIME NO.450/2023 OF CHITTARIKKAL POLICE STATION, KASARGOD DISTRICT
- ANNEXURE III A TRUE COPY OF THE TRANSFER CERTIFICATE DATED 03.06.2022
- ANNEXURE IV A TRUE COPY OF THE TRANSFER CERTIFICATE DATED 03.11.2023
- ANNEXURE V A TRUE COPY OF THE LETTER DATED 29.11.2023 ISSUED TO THE ASST EDUCATION DIRECTOR, KASARGOD
- Annexure-VI A TRUE COPY OF THE REQUEST SUBMITTED BY THE PTA OF MGM UP SCHOOL, KOTTAMALA DATED 07.12.2023
- Annexure -VII A TRUE COPY OF THE REQUEST GIVEN BY THE STUDENTS OF THE MGM UP SCHOOL, KOTTAMALA
- Annexure-VIII A TRUE COPY OF THE REQUEST SUBMITTED BY THE PEOPLE FROM WEST ELLARI VILLAGE DATED 02.12.2023
- Annexure-IX A TRUE COPY OF THE LETTER DATED 06-12-2023 SUBMITTED BY THE PRATHEEKSHA CHARITBALE SOCIETY