

Karnataka High Court

Kurubara Veereshappa Alias K ... vs The State Of Karnataka on 4 May, 2023

Bench: Anil B Katti

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CRL.A No. 100109 of 2023

IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH

DATED THIS THE 4TH DAY OF MAY, 2023

BEFORE

THE HON'BLE MR JUSTICE ANIL B KATTI

CRIMINAL APPEAL NO. 100109 OF 2023

BETWEEN:

KURUBARA VEERESHAPPA @ K. VEERESH,
S/O KURUBARA HOSAGERAPPA @ K. HOSAPERAPPA,
AGED ABOUT 33 YEARS,
R/O. WARD NO.08, BEERAPPA TEMPLE STREET,
ANDHRAL, BALLARI-583104

...APPELLANT

(BY SRI. A. VEERANNA,ADV.)

AND:

1. THE STATE OF KARNATAKA
THROUGH SUB INSPECTOR OF POLICE APMC YARD PS
BALLARI

REPRESENTED BY ITS

STATE PUBLIC PROSECUTOR

HIGH COURT BRANCH,
DHARWAD-580011

2. MANMATHUDU S/O KRISHNAIAH
AGE. 28 YEARS,
R/O. ANDHRAL ROAD,
NEAR THUNGABHADRA COTTON MILL, BALLARI, 583104.

...RESPONDENTS

(BY SRI. PRAVEEN K. UPPAR, ADV.)

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THIS CRIMINAL APPEAL IS FILED U/SEC. 14A(2) OF CR.P.C. SEEKING TO SET-ASIDE THE ORDER PASSED BY THE FIRST ADDITIONAL DISTRICT AND SESSIONS JUDGE, BALLARI IN CRL.MISC P NO. 97/2023 ARISING OUT OF CRIME NO. 05/2023 REGISTERED BY APMC YARD PS BALLARI, FOR THE O/P/U/SEC. 324, 504 AND 506 R/W SEC. 34 OF IPC AND SECTIONS 3(1)(r) AND 3(1)(s) OF SCHEDULE CASTES AND SCHEDULE TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 AND ENLARGE THE APPELLANT ON ANTICIPATORY BAIL IN THE EVENT OF HIS ARREST, PENDING INVESTIGATION AND TRIAL OF THE CASE BY ALLOWING THIS APPEAL.

THIS APPEAL COMING ON FOR ORDERS AND THE SAME HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 12.04.2023, THIS DAY, THE COURT, DELIVERED THE FOLLOWING:

JUDGMENT

Appellant-accused feeling aggrieved by rejection of anticipatory bail petition filed under Section 438 of Cr.P.C. on the file of I Addl. District and Sessions Judge, Ballari, in Crl.Misc.97/2023, dated 01.03.2023, preferred this appeal.

2. Parties to the appeal are referred with their ranks as assigned in the trial Court for the sake of convenience.

3. The factual matrix leading to the case of prosecution can be stated in nutshell to the effect that on 27.1.2023 at about 6.30 p.m. while complainant was returning after walking near Government School of Andral Village Auto CRL.A No. 100109 of 2023 stand there was quarrel between Sri.Y.B.Govind and Kurubar Beerappa. Complainant spoke to Sri.Y.B.Govind and went to his house. On 28.1.2023 at 4.30 p.m. while complainant was returning after walking near Government School of D.C. Compound, Andral village, accused, who is son-in-law of Kurubar Beerappa abused the complainant in filthy language by taking his caste on the pretext that he is supporting Sri.Y.B.Govind. On complainant questioning as to why he is abusing by taking caste, accused being enraged of the same, by means of bear bottle in his hand, assaulted over the head of complainant, thereby causing bleeding injury. The known persons of complainant i.e. Premkumar S/o Kollarappa, Narasimh S/o Parashuram, Suresh S/o Honnaswami @ Isagiri pacified quarrel and accused went away from the place by threatening to kill him. On these allegations made in the complaint case was registered in APMC Yard P.S Crime No.5/2023 for the offence punishable under Sections 324, 504, 506 and Sections 3(1) (r), 3(1)(s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (for short 'the Act').

4. The anticipatory bail application filed by appellant- accused before the Trial Court in Crl.Misc.No.97/2023 on the CRL.A No. 100109 of 2023 file I Addl. District and Sessions Judge, Ballari came to be rejected by order dated 1.3.2023.

5. Learned High Court Government Pleader appeared for respondent-State and filed objections contending that there are sufficient material evidence against accused for the aforesaid offences alleged against the accused. The offence under Section 324 of IPC is a schedule offence listed in the schedule appended to the Act and contemplates a statutory presumption of guilt under Section 8 of the said Act. There is legal bar in terms of Section 18 of the Act to maintain anticipatory bail petition. Looking to the nature of injury suffered by complainant and circumstances under which offence has been committed, the Trial Court was justified in rejecting the anticipatory petition filed by appellant. Therefore, prayed for dismissal of the appeal.

6. Heard the arguments of both sides.

7. Learned HCGP along with statement of objections produced relevant records collected by investigating officer during the course of investigation. Complaint allegation would go to show that accused picked up quarrel with complainant on the pretext that he is supporting Sri.Y.B.Govind in the quarrel CRL.A No. 100109 of 2023 that took place between Sri.Y.B.Govind and Kurubar Beerappa on 27.1.2023. The accused alleged to have abused the complainant in filthy language by taking his caste with intention to humiliate, who is member of schedule caste in public view.

8. Learned High Court Government Pleader for respondent No.1-State contended that anticipatory bail petition is not maintainable in view of bar contemplated under Section 18 of the Act.

9. Per contra, the learned counsel for appellant has argued that the bar under Section 18 of the Act will not apply, if complaint does not make out a prima-facie case for applicability of the provisions of the Act. In support of such contention he relied on the judgments of Co-ordinate Bench of this Court in Shailesh Kumar V/s. State of Karnataka, reported in 2023 Live Law (Kar) 31, whereby referring the judgment of Hon'ble Apex Court in the case of Hitesh Verma V/s. State of Uttarakhand reported in (2020) 10 SCC 710 and judgment of Co-ordinate Bench in Lokanath V/s. State of Karnataka, reported in 2021 SCC Online Kar 14896, it has been observed and held that that the offence under the Act is not established merely on the fact that the informant is a CRL.A No. 100109 of 2023 member of Scheduled Caste, unless there is an intention to humiliate a member of Scheduled Caste or Schedule Tribe for the reason that the victim belongs to such caste.

10. In the present case, looking to the complaint allegations, it would go to show that the only allegation is that accused abused complainant in filthy language by taking his caste. Other than the allegation in the complaint that accused has abused complainant by taking his caste with an intention to insult him in public view, there is no other evidence to draw any inference of insulting the complainant with an intention to insult him in public view. Therefore, at this stage, prima facie no case is made out for the offence punishable under Sections 3(1) (r) and 3(1)(s) of the Act.

11. The accused is alleged to have assaulted over the head of complainant by means of bear bottle on the pretext that complainant is supporting Sri.Y.B.Govind in the quarrel that took place between Sri.Y.B.Govind and Kurubar Beerappa that occurred on 27.1.2023. It is true that offence under Section 324 of IPC is schedule offence listed in the schedule appended to the Act and contemplates statutory presumption of guilt under Section 8 of the Act, which is in the nature of CRL.A No. 100109 of 2023 reverse onus, burden vest on the accused, unless effectively rebutted. The statutory presumption in terms of Section 8 of the Act arises only when the prosecution proves basic fact constituting offence under Section 324 of IPC. The question of placing rebuttal evidence by accused arises only after initial burden is discharged by prosecution. Therefore, at this stage, it cannot be held that offence under Section 324 of IPC is proved.

12. On perusal of the wound certificate, it would go to show that complainant has suffered cut lacerated wound over right eye, tenderness over right parital area, ringing sensation in both ears and tenderness over left knee. X-ray finding recorded in the wound certificate over left knee, pelvic with both hip found no fracture is seen. City Scan report recorded in the wound certificate speaks about suggestion of minimal acute subarachnoid hemorrhage.

13. Indisputedly the injured complainant has seen discharged from hospital and as such, there is no danger to life. Looking to the facts and circumstance of the case and manner in which the alleged incident took place, further the fact that injured has been already been discharged from the hospital and substantial part of the investigation being completed which is CRL.A No. 100109 of 2023 evidenced from the records produced by learned HCGP, in my opinion, accused is entitled for anticipatory bail. Consequently, proceed to pass the following:

ORDER The appeal filed by the appellant is hereby allowed.

The order of I Addl. District and Sessions Judge, Ballari, in Crl.Misc.97/2023, dated 01.03.2023 is set aside.

Appellant-accused is ordered to be released on bail in the event of his arrest in connection with APMC Yard police station Crime No.5/2023, subject to following conditions:

- i) Appellant is ordered to be released on bail on executing personal bond for a sum of Rs.50,000/- with one surety for likesum amount.
- ii) The appellant shall appear before the Investigating Officer as and when called for the purpose of investigation.
- iii) The appellant shall not leave the jurisdiction of trial Court without its prior permission.

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- iv) The appellant shall not tamper with the prosecution witnesses in any manner.

(Sd/-) JUDGE Vb/-