

CRIMINAL MISCELLANEOUS CASE No.1221/2022
(Crime No.483/2022 of Koyilandy Police Station)

Civic Chandran @ C.V. Kuttan,
aged 73 years, S/o Late Velappan,
Chinnangath House, West Hill (PO),
Kozhikode- 673005.

And:-

- 002

This petition filed u/s. 438 Cr.P.C. praying to release the petitioner on bail, in the event of arrest.

This petition coming on this day for orders before me upon perusing the petition and upon hearing the arguments of **Sri. P.V. Hari & Smt. Sushama. M** advocates for the petitioner and the **Public Prosecutor** for the State and the court passed the following:-

This is an application for bail filed under Section 438 Cr.P.C. by the accused in crime No.483/2022 of Koyilandy Police Station.

2. The prosecution case in brief is as follows:- The petitioner is a social activist and a well known writer. The police registered a case against him for offence punishable under Sections 354, 354 A(1)(ii), 354 A(2), 354

D(2) of IPC and Sections 3(1)(w)(i) and 3(2)(va) of the SC/ST (Prevention of Atrocities) Act 1989. The allegation against him is that on 17.04.2022 at about 6.30 A.M., the accused who is a member of higher caste revealed that he has love towards the defacto complainant and suddenly kissed on the back of her neck. On 16.07.2022 she filed a complaint before the SHO, Koyilandy Police Station and the present case was registered.

3. The learned counsel for the accused would contend that it is a false case and the defacto complainant is making her rivalry towards this 73 years old man due to her personal vengeance.

4. Per contra the prosecution produced the report submitted by the SHO, Koyilandy Police Station. The 2nd respondent also filed a detailed objection to the bail application.

5. Heard the counsels and perused the records.

6. There are two important questions that has to be considered in this case. Whether Section 18 and 18A of SC/ST (Prevention of Atrocities) Act will prevent the court from exercising the discretion under Section 438 Cr.P.C and whether there is a prima facie case. These two questions can be answered with the aid of the documents produced by both parties. These documents include the communication in the social media and the whatsapp group.

7. The constitution of India provides equality before law under the provisions contained in the Article 14. Article 15 (4) of the constitution stated an exemption from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. Further protection is conferred under Article 15(5) concerning their admission to educational institutions. The creation of a casteless society is our ultimate aim. A day would come as expected by the framers of the Constitution, when we do not require any such legislation like SC/ST (Prevention of Atrocities) Act of 1989, and there is no need to provide any reservation of SC/ST and OBC and only one class of human exist equal in all respects and no caste system or class of SCs/STs or OBCs exist, all citizens are emancipated and become equal as per Constitutional goal.

8. The important question is with respect to the application of Section 18 and 18A. The undoubtfull general principle is that the general provisions will have no application in case of a particular provision in the special statute. Section 5 of Cr.P.C reiterates this principle that *generalalia speciallibus non derogant*. Section 438 Cr.P.C has no application in the case of SC/ST (Prevention of Atrocities) Act 1989. What is stated in Section 18 of the Act is "it shall not apply to cases under the Act 1989 if the complainant does not make out a

prima facie case for applicability of the Provisions of the Act 1989. This was amended in view of the decisions passed by the Apex Court in Dr. Subhash Kashinath Mahajan Vs. State of Maharashtra and Another (2018 (2) KLT 33 SC). The newly added Provisions under Section 18 and 18A was interpreted by the Apex Court in Prathvi Raj Chauhan Vs. Union of India (2020 (1) KLT 810 Supreme Court). There section 18A was elaborately interpreted by the Apex Court. Section 18 reads " Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act".

9. Section 18A reads –

- “(a) preliminary enquiry shall not be required for registration of a First Information Report against any person, or
- (b) The investigating officer shall not require approval for the arrest, if necessary, of any person, against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply.
- (ii) The provisions of Section 438 of the Code shall not apply to a case under this Act notwithstanding any judgment or order or direction of any Court”.

10. Subsequently, the applicability of Section 438 Cr.P.C was considered by the Hon'ble High Court in Kunjaru Vs. State of Kerala (2022 (2) KLT 509). Therein it was inter alia decided that there is no

absolute bar under Section 438 Cr.P.C. The apex Court again in **Hitesh Verma Vs. State of Uttarakhand (2020 (6) KLT 561)** held that when the intention is to humiliate and the parties are litigating over the possession of the property, the mere fact that the defacto complainant is a member of scheduled caste will not come under the Provisions of the Special Act. Again in **Pareeth Vs State of Kerala (2021 (2) KLT 184)** the Hon'ble High Court of Kerala held that the existence of an order of a Special Court is *sine qua non* for approaching the Court.

11. In the light of these parameters laid down by the different Judicial pronouncement the first part of the question whether the offence under Section 3 of the SC/ST (Prevention of Atrocities) Act will prima facie maintainable can be considered. The Act contains the object and reasons. It reads "the act to prevent the commission of offences of atrocities against the members of the scheduled caste and schedule tribe to provide for Special Courts and exclusive Special Courts for the trial of such offences and for the relief of rehabilitation of victim of such offences and for matters connected there with or incidental relief therein. What is an atrocity is defined under Section 2(1)(a) of the Act. The different punishments for these atrocities are contained in Section 3 of the Act. Here, the offences alleged against the accused is under Section 3(1)(w)(i) and 3(2)(va) of the Act. 3(1)(w) (i) reads- "intentionally touches a woman belonging to a Scheduled

Caste or a Scheduled Tribe, knowing that she belonging to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent. Section 3(2)(va) reads "commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable."

12. On a comparison of these two Sections it is ample clear that the accused should have knowledge that the victim belongs to a scheduled caste or schedule tribe and such act is of a sexual nature and is without the victim's consent. So the next question is whether the offence under Section 3(2), 3(1)(w)(i) and 3(2) (va) of the Act will stand against the accused.

13. The learned counsel for the accused would rely upon the long delay caused in filing the complaint. As I already pointed out even though the incident happened on 17.04.2022 the FIR was registered only on 16.07.2022. There is no satisfactory explanation for this long delay.

14. The place of occurrence is near Ayyappan Kavu and inside Kadal Veedu. The allegation is that the accused uttered with sexual intention "എനിക്ക് നിന്റെ പിൻകുഴത്തിൽ ഉമ്മ വെക്കണമെന്ന്"

പറഞ്ഞുകൊണ്ട് അന്യായക്കാരിയെ കയറി പിടിച്ചു പിൻകുഴത്തിൽ ഉമ്മ വെച്ച് ലൈംഗിക അതിക്രമം നടത്തി"

15. The learned counsel would further contend that is highly improbable to have such an incident because the accused is 74 year old and the victim is having a well built up body and aged 42. The pictures of the different meetings shows that the accused cannot stand independently and he needs the aid of somebody or some object to stand. Further more the victim is taller than the accused. Considering his age and poor health condition it cannot be believed that the accused made a kiss on her back without her consent. The different photographs clearly show that the victim and the accused were in cordial terms and there was some dispute with respect to the publication of a literature written by the victim.

16. The case of the 2nd respondent is that she suffered sexual harassment and there was a mental trauma that is expressed in facebook. In that itself the victim had disclosed the name of another person Jayadevan as one of the persons who tried to sexually abuse her. That was not disclosed in the complaint submitted before the police. The complaint made by the victim through the social media was enquired into by 3 members and all are ladies. There the accused had given a detailed objection and after considering the case of the victim and the accused the conclusion is that since there was no evidence

by the defacto complainant and victim, they could not come to a conclusion regarding the complaint against Shri. Manoharan and the accused. So prior to the filing of the complaint before the Police there was an enquiry conducted in this case. There also guilt of the accused was not at all proved.

17. Another important contention raised is that the accused had no knowledge that the victim belongs to a Schedule Caste. For this the learned counsel is relying upon the FI statement. There it is not at all stated that the act of the accused was with knowledge that the victim belongs to a member of schedule caste or schedule tribe. It is further to be noted that the copy of the SSLC book of the accused would reveal that he was a social worker who refuse to put his caste name in the SSLC Book. It is highly unbelievable that the touching or hugging as alleged by the victim that the accused had a knowledge about her caste, the accused is a reformist and is engaged in social activities and he is against the caste system. He is writing and fighting for a casteless society. In such a circumstance it is highly unbelievable that he will touch the body of the victim fully knowing that she is member of scheduled caste. In order to attract the offence under Section 3(1)(w)(i) it has to be established that the act of the accused was with a knowledge that the victim belongs to a member of scheduled caste or schedule tribe community. Here the

available materials clearly show that this is an attempt to tarnish the status of the accused in the society. He is fighting against the caste system and is involved in a number of agitations. So offences under Section 3(1)(w)(i) and 3(2)(va) of SC/ST (Prevention of Atrocities) Act will not prima facie stand against the accused and the bar u/s 18 and 18 (A) of the Act has no application. So the power u/s 438 can be exercised and the accused can be enlarged on bail.

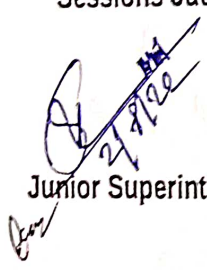
In the result, the bail application is allowed.

- (i) The accused shall be released on bail on executing a bond for Rs.50,000/- with two solvent sureties for the like sum in case of arrest by the SHO, Koyilandy Police Station.

(Dictated to the Confidential Assistant., transcribed by her, corrected and pronounced by me in open court, this the 2nd day of August, 2022).

Sd/-
Sessions Judge

// True Copy//


Junior Superintendent

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- Copy to: *The DSP, Vatakada.*
1. The JFCM Court, Koyilandy.
 2. The SHO, Koyilandy Police Station.
 3. The Public Prosecutor