

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 16TH DAY OF FEBRUARY 2018 / 27TH MAGHA, 1939

CRL.A.No. 207 of 2018  
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AGAINST THE ORDER IN CRMC 187/2018 of SESSIONS COURT,  
ERNAKULAM DATED 05-02-2018

CRIME NO. 694/2017 OF NJARAKKAL POLICE STATION, ERNAKULAM

APPELLANT(S)/PETITIONER :-  
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SHELBIN, S/O.VISWAMBARAN, AGED 29 YEARS,  
THAIPPARAMBIL HOUSE, PUTHUVYPPU POST,  
VYPIN, ERNAKULAM DISTRICT, PIN-682508.

BY ADVS.SRI.P.K.VARGHESE  
SMT.M.B.SHYNI

RESPONDENT/RESPONDENT :-  
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STATE OF KERALA,  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM.

BY SMT.SREEJA V., PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 16-02-2018,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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**P.UBAID, J.**

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**Crl.Appeal No.207 of 2018**  
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Dated this the 16<sup>th</sup> day of February, 2018

**JUDGMENT**

The petitioner herein is the sole accused in Crime No.694 of 2017 of the Njarakkal Police Station registered under Sections 341, 324, 447, 294(b), 509 and 506(ii) IPC, and 3(1)(b)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (as amended by Amendment Act of 2015). He has brought this appeal under Section 14A of the SC/ST Act against the order of the Special Court (Sessions Court), Ernakulam disallowing his request for pre arrest bail under Section 438 Cr.P.C. The court below disallowed bail on the ground that pre-arrest bail is barred under Section 18 of the SC/ST Act. In fact, an appeal under Section 14A of the SC/ST Act is not possible against an order disallowing pre-arrest bail. There is no question of even entertaining an application for pre-arrest bail under the SC/ST Act. The only sort of bail possible under the Act is regular bail. So, only an order allowing or disallowing regular bail is appealable under Section 14A of the SC/ST Act. However, when this appeal came up for consideration, the learned

counsel for the appellant submitted that the appellant would like to surrender before the trial court, and make application for regular bail.

2. On a perusal of the materials, I find that prominently and basically the dispute in this case is only a property dispute. The main offences alleged under the Indian Penal Code are bailable under the law. What is barred under Section 18 of the SC/ST Act is only pre-arrest bail. The regular court can entertain an application for regular bail, and even grant bail, if the accused deserves bail otherwise. Possibility of the provisions of the special law being misused will have to be borne in mind by the court below in dealing with application for regular bail. What is punishable under Section 3(1)(b) of the SC/ST Act is the act of dumping of excreta or sewage or carcass or any other obnoxious substance in the premises, or at the entrance of the premises, occupied by a member of a Schedule Caste or a Schedule Tribe. It appears that regarding the property involved in this case there is dispute between the parties. For a prosecution under Section 3(1)(s) of the SC/ST Act, the alleged offence must have been committed within public view, and also with the object of abusing or humiliating a member of Schedule Caste or Schedule Tribe on the ground that he or she belongs to such a

caste or tribe. Let the court below examine the whole case records, and see whether the essentials of the offences under the SC/ST Act are there in the prosecution records. If the dispute is prominently and practically a civil dispute, the Court will have to approach the dispute accordingly in view of the fact that the other offences are bailable under the law. Let the court below take appropriate decision judiciously in the matter of regular bail, bearing in mind the possibility of misuse of the provisions of the Special Act. If the accused deserves bail, he can be granted bail on conditions.

In the result, this application is disposed of, with a direction to the court below, that in case application for regular bail is filed by the petitioner on surrender, or on production by the police on arrest, the same shall be appropriately and judiciously considered and decided on the date of application itself, as indicated above.

rkj

Sd/-  
**P.UBAID, JUDGE**