

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Reserved on: 1st May, 2013*
Date of Decision: 6th May, 2013

+ BAIL APPLN. 631/2013

MANJEET SINGH & ORS Petitioners
Through Mr R S Juneja and Mr Ankit Kumar,
Advs.

versus

STATE OF DELHI Respondent
Through Ms Jasbir Kaur, APP for State with Insp.
Rohitash Kumar, SHO, Farsh Bazar
Mr Ritesh Bahri and Mr Randeep Kr. Rehan,
Advs. for complainant

CORAM:
MR. JUSTICE R.V. EASWAR

JUDGMENT

R.V. EASWAR, J.:

This is a petition for grant of anticipatory bail under Section 438 of the Criminal Procedure Code in respect of FIR No.264/12 under Section 341/323/34 of the IPC and Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, hereinafter referred to as “the SC/ST Act”.

2. The brief facts giving rise to the present anticipatory bail application are these. According to the prosecution, on 22.7.2012, the complainant

Harish Kataria and his brother Komal Kataria were in their shop and their other brother Sunil Kataria was roaming around in the street. At about 7.30 p.m., Manjeet Singh, the first of the present petitioners is alleged to have uttered a caste remark to Sunil Kataria calling him “O khatikde, I will make you forget how to do business”. When Sunil Kataria told Manjeet Singh not to utter such words, Manjeet and his sons Sachin and Sagar and their servant Vijay Kumar beat up Sunil Kataria. When the complainant and his brothers tried to save Sunil Kataria, they were also beaten up. The allegation levelled by the complainant against Manjeet Singh was that he uttered the caste remark against Sunil Kumar Kataria which was an offence under the SC/ST Act. It appears that there was a further investigation by the police under Section 156(3) of the Cr.P.C. at the conclusion of which a final report was submitted against all the three accused persons, namely, Manjeet Singh Sachdeva, Sachin Sachdeva and Sagar Sachdeva. This final report was submitted on 11.3.2013 after examining about 19 witnesses. The final report refers to the statement of two witnesses, namely, Sanjeev Jain and Bharat Kwatra. They are said to have deposed that Manjeet Singh uttered the words “*khatikde*” as also the words “*chamar*” and “*chude*”. The case of the prosecution thus is that all the three petitioners as well as their servant Vijay Kumar have committed the offence under Section 323/341/34 of the IPC read with Section 3(i)(x) of the SC/ST Act.

3. All the three persons i.e., Manjeet Singh, Sachin and Sagar applied for anticipatory bail but it was rejected by the lower court by order dated 3.4.2013. A perusal of the order of the sessions court shows that it has relied heavily on the judgment of the Supreme Court in ***Vilas Pandurang Pawar and Anr. Vs. State of Maharashtra and Ors.*** (2012) 8 SCC 795 and has held that Section 18 of the SC/ST Act rules out the application of Section 438 of the Cr.P.C. in respect of persons who have committed an offence under the SC/ST Act. The sessions court has also found on a perusal of the statements recorded under Section 161 Cr.P.C. that all the accused persons had made caste abuses against the complainant and his brothers and that such utterances were made outside the shop in the *gali* within public view. Accordingly, the sessions court has held that prima facie the provisions of section 3(i)(x) of the SC/ST Act are attracted. Before the sessions court the accused had pleaded that the dispute arose basically out of business rivalry between the two parties who were running their business in the same street on opposite sides and where business rivalry is the reason for the dispute, anticipatory bail can be granted under Section 438 Cr.P.C. even where the accused is charged with the offence under the SC/ST Act. This contention was rejected by the sessions court on its understanding that the judgment of the Supreme Court cited supra ruled out the applicability of the Section 438 of the Cr.P.C. and Section 18 of the SC/ST Act. The anticipatory bail application was accordingly rejected.

4. The present petition for grant of anticipatory bail has been filed against the aforesaid order of the sessions court.

5. It is contended on behalf of the petitioners that the main reason for the complaint is the business rivalry between the petitioners and the complainant. It is contended that Manjeet Singh had filed W.P.Crl.1088/12 before this Court alleging harassment by the complainants by beating the petitioners. The writ court had directed the SHO to provide adequate protection to the petitioners and their family members and ensure that no bodily harm was caused to them. The DCP (East District) had filed an affidavit confirming the existence of business rivalry between the two parties and had also assured the court that protection will be given to the petitioners. On the filing of the affidavit and on being satisfied with the same, the petitioners withdrew the writ petition. In its order dated 18.10.2012, the writ court while dismissing the writ petition as withdrawn directed the police to review/withdraw the measures it had taken to provide security. On the basis of the writ proceedings, it is contended on behalf of the petitioners that the complaint was motivated by business rivalry the existence of which was confirmed. It is further pointed out that the FIR is an afterthought since it was filed when the petitioner was in hospital having suffered beatings from the complainant a few hours prior to the FIR having been filed. It is submitted that the FIR was filed only as a counterblast to the FIR 263/2012 filed by the present

petitioners against the complainants on 22.7.2012. It is pointed out that the complainant's FIR against the petitioners has been numbered as FIR 264/2012, which is the next number of the FIR filed by the petitioners. According to the learned counsel for the petitioners, this chain of events clearly points to the falsity of the complaint that the petitioners committed offences under the SC/ST Act by making caste remarks against the complainant. It is also contended that the challan dated 11.3.2013 filed by the IO was ambiguous inasmuch as it referred to continuous improvements having been made by the complainant Harish Kataria over his original statement and also to the fact that the complaints regarding allegation of caste remarks was made after one month of the incident, with several improvements. According to the learned counsel for the petitioners, even the two witnesses, i.e., Sanjeev Jain and Bharat Kwatra made improvements to their statements in as much as the original complaint only mentioned about the word "*Khatikde*" and not the words "*chamar*" and "*chude*". It is pointed out that the challan itself states that evidence in support of passing the caste remarks within the public view has not come up, but the possibility of passing the caste remarks by the petitioners cannot be ruled out. This, according to the learned counsel, is an ambiguous statement.

6. In support of his submissions the learned counsel for the petitioner drew my attention to the following judgments :

1. ***Ashok Kumar Mahajan and Ors. Vs. State of Punjab*** (2010) (1) RCR (Crl.) Punjab and Haryana,
2. ***Ramesh Prasad Bhanja and Ors. Vs. State of Orissa*** (1996) CrL.L.J.2743,
3. ***Mukesh Kumar Saini and Ors. Vs. State*** (Delhi Administration) (2001)(2) JCC (Delhi) 235 and
4. ***Pankaj D Suthar Vs. State of Gujrat*** 1992(1) Crimes 1122 (Guj).

7. The learned counsel for the petitioners also contended that there is no allegation against Sachin Sachdeva and Sagar Sachdeva who are the sons of Manjeet Singh and therefore no prima facie case for Section 34 of the IPC has been made out.

8. On the other hand, the learned Additional Public Prosecutor placed strong reliance on the judgment of the Supreme Court in Vilas Pandurang Pawar (supra). She submitted that Section 18 of the SC/ST Act is a clear bar on the applicability of Section 438 of the Cr.P.C. She pointed out that the charges in this case are yet to be framed and that the custodial interrogation of the petitioner was required. She pointed out that there can be no doubt that Manjeet Singh did make the caste remark “*khatikde*” in a place which is open to public view and that it is supported by the statement of the two public witnesses i.e. Sanjeev Jain and Bharat Kwatra. She contended that in the light of the judgment of the Supreme Court cited supra the court has no option but to reject the application for anticipatory bail since the complaint contains a

clear averment. My attention was drawn to the observations of the Supreme Court in paragraphs 9 and 10 of the judgment (as reported in SCC).

9. I have also heard the learned counsel for the complainant who had assisted the learned Additional Public Prosecutor, with the leave of this Court.

10. After careful consideration of the rival contentions and the material placed before me, I am afraid the petitioner Manjeet Singh Sachdeva cannot be granted anticipatory bail. Section 18 of the SC/ST Act reads as under :

“18. Section 438 of the Code not to apply to persons committing an offence under the Act. – 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.”

A bare reading of the section shows that it is an absolute bar on the applicability of Section 438 of the Cr.P.C. to any case involving the arrest of any person on an allegation that he has committed an offence under the SC/ST Act. Though, there is some force in the contention of the learned counsel for the petitioners that despite the bar, it is still open to the court to grant bail in cases involving offences under the SC/ST Act by invoking the Section 438 of the Code, but it is a very limited exception. A perusal of the judgment of the Supreme Court in Vilas Panduranga Pawar (supra), particularly the observations in paragraphs 9 and 10, shows that the bar of Section 18 of the SC/ST Act is absolute unless it can be shown that there is no specific averment in the complaint about the uttering of the caste name or

remark. It was also observed that the provisions of Section 18 of the SC/ST Act cannot be “easily brushed aside by elaborate discussion on the evidence”. In paragraph 12 of the judgment, it has been made clear that everything depends upon the nature of the averments made in the complaint.

11. Even the most liberal and broad understanding of the observations of the Supreme Court cannot overlook the very strict manner in which the provisions of Section 18 of the SC/ST Act and Section 438 of the Code have been construed. The strictly limited exceptions to the bar imposed by Section 18 appear to be where the complaint does not contain any specific averment about the insult or intimidation with intent to humiliate by calling by the caste name, absence of a specific averment that it was uttered in public view etc. If there is a specific averment in the complaint to this effect, Section 18 of the SC/ST Act is attracted. In the light of the judgment of the Supreme Court, it is difficult to accept the argument advanced by the learned counsel for the petitioners on the basis of the judgments of the Punjab and Haryana High Court, Orissa High Court and the Gujrat High Court (supra). Even in the case of Mukesh Saini and ors. (supra) this Court granted anticipatory bail only because the offending words were found not to have been uttered in public view. The words were uttered while the brother of the complainant was dragged inside before the arrival of neighbours. That was thus a case which turned on the fact that there was no utterance in public view. In fact the Court

recognised that there must be a specific allegation in the complainant against each of the accused and that Section 34 of the IPC cannot be brought in aid to support an omnibus statement that the accused persons uttered humiliating words. Thus it was on the peculiar facts of the case that this Court set the accused on bail. In the present case, however, there is prima facie evidence to show that at least one word about the caste of the complainant was heard uttered in public view. It was a public street and there are at least two witnesses who heard the word '*khatikde*' uttered by Manjeet Singh.

12. In the light of the aforesaid position, I am not able to accept the argument of the learned counsel for the petitioner that the charge sheet was ambiguous or that the complaint was motivated by business rivalry or previous enmity.

13. There is, however, no charge against the other two petitioners namely, Sachin Sachdeva and Sagar Sachdeva to the effect that they uttered any offending words under the SC/ST Act in public view. In fact, the learned additional public prosecutor fairly stated so before me.

14. In the above circumstances I reject the application filed by Manjeet Singh Sachdeva for anticipatory bail. The other two applicants namely Sachin Sachdeva and Sagar Sachdeva are however, granted anticipatory bail on each of them furnishing a personal bond in the sum of ₹25,000/- with one surety each of the like amount to the satisfaction of the IO/SHO/AO.

15. The petition is allowed in so far as it relates to Sachin Sachdeva and Sagar Sachdeva subject to the above conditions and it is dismissed so far as it relates to Manjeet Singh Sachdeva.

(R.V. EASWAR)
JUDGE

MAY 06, 2013
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