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IN THE HIGH COURT OF DELHI AT NEW DELHI

DATE OF DECISION: 11th DECEMBER, 2013

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BAIL APPLN. 2242/2013

BALESH

..... Petitioner

Through Mr. Atul Pandey, Advocate

versus

THE STATE

..... Respondent

Through Ms. Asha Tiwari, APP
Inspector R.K. Atri, ATO
Badarpur
Mr. V.K. Nayyar, ACP, PS
Sarita Vihar.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. This is an application under Section 438 of the Cr.P.C. for grant of anticipatory bail in case FIR No. 385/2013 u/s 452/354/323/506/382/34 IPC & 3(I) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as SC/ST Act), registered with PS Badarpur.

2. The case of the prosecution as revealed from the FIR is that Mithilesh lodged a complaint with police alleging, *inter alia*, that she

is residing at house No. 2936, Gali No. 70, Block E-2, Molarband Extn. Badarpur, New Delhi along with her husband and three children. Balesh is residing in her neighbourhood with his family and belongs to Gujar caste. The complainant belongs to scheduled caste. Balesh, his wife and daughter since long time used to abuse in filthy language to the complainant and her husband regarding their caste by saying “Chamar” and “Chamariya”. He insulted them by using abusive language and also gave beatings. However, the matter was compromised in the police station. On 15th November, 2011 at about 8:00 a.m., she was taking bath in the bathroom in front of her house. Balesh came nearby the bathroom, which was opposed by her, then he left the place by saying that “Chamariya, your mind will be teached/cured”. At about 11:00 a.m., his wife Suman and her daughter Rashmi forcibly entered her house and started saying that “Chamariya, you tried to stop our way”, from behind Balesh asked his wife and daughter to beat her, then Suman caught hold of her hair and pushed her on the floor. Her daughter gave beatings to her by fist and leg blows. Suman attacked on her right hand by danda, due to which she sustained injuries. Balesh started pulling her clothes and pulled

her gold ear rings and also snatched her purse containing Rs.500/-. He gave a leg blow on her stomach and also snatched her mobile. They threatened to kill whole family. Due to injury on her head, she became unconscious. Thinking her to be dead, they left the place. When she regained consciousness, then after borrowing phone from some neighbour, she made a call to the police who took her to the police station instead of hospital. After half an hour, her husband came and then took her to Trauma Centre where also the doctors did not initially treat her by saying that she should have come with the police officials. Subsequently, she was medically examined and then this complaint was lodged which resulted in registration of FIR u/s 452/354/323/506/382/34 IPC & 3(I) SC/ST Act.

3. It is submitted by learned counsel for the petitioner that although he is conscious of the fact that in a case which attracts the provision of SC/ST Act, application for anticipatory bail does not lie, however, it was submitted that essential ingredients of Section 3 of SC/ST Act are not fulfilled. In fact, the petitioner was not present at the time of alleged occurrence as he is doing the business of milk. As per the case of the complainant incident took place at 8:00 a.m. in the

morning. During that time, being a milk vendor, he used to go to distribute milk to his regular customers. As such, question of his presence at the spot does not arise. There are 4-5 tenants/occupiers living in the same property and even adjacent to the room of the complainant, had any such incident taken place they would have been aware about the same. The factual position is that the complainant is the tenant and she has not paid the rent since long and wanted to grab the property. The landlord of the complainant is close friend of the petitioner and on 13th November, 2011, the petitioner along with landlord of the complainant had gone to her house and found that she was using the electricity supply by committing theft by installing the wire from main line. When the same was objected by the landlord and the petitioner, then complainant became aggressive and started using filthy and abusive language. No such castism 'remarks' have been used by the petitioner at any point of time. The injuries have been opined to be simple. Co-accused have already been released on anticipatory bail. Neighbours of the petitioners have given their statement to the police in favour of the petitioner which clearly shows that the petitioner has been falsely implicated in this case. He also

referred to the status report submitted by the Police in the Court of learned MM for showing that a petty quarrel had taken place and no action was taken by the police. As such, the petitioner be released on bail.

4. Reliance was placed on *Vilas Pandurang Pawar & Anr. vs. State of Maharashtra & Ors.*, (2012) 8 SCC 795; *Mukesh Kumar Saini & Ors. vs. State (Delhi Administration)*, 2001 Cr.LJ 4587 and *Manjeet Singh & Ors. Vs. State of Delhi*, 2013 Cri.LJ 3070.

5. The application is opposed by the learned Public Prosecutor for the State by submitting that besides the complainant, statement of two public witnesses Mr. Bhim Singh and Jabar Singh were recorded which corroborated the version of the complainant. During the course of investigation, the complainant produced SC certificate which was seized and got verified. Petitioner is a habitual offender and is also involved in case FIR No.148/2013 u/s 354/506 IPC, PS Badarpur, New Delhi which is pending in the Court. The petitioner is evading his arrest and did not join investigation. Non bailable warrants has already been obtained from the Court. The crime is serious in nature.

His custodial interrogation is needed. As such, he is not entitled to be released on bail.

6. The FIR in the instant case has been registered under Section 3(1) SC/ST Act besides other offences under IPC. Section 18 of 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.

7. The scope of Section 18 of SC/ST Act r/w Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no Court shall entertain application for anticipatory bail, unless it *prima facie* finds that such an offence is not made out.

8. In ***Vilas Pandurang*** (supra), relied upon by the learned counsel for the petitioner himself, it was held that while considering the application for bail, scope for appreciation of evidence and other material on record is limited. Court is not expected to indulge in

critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribe and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence.

9. On factual matrix of the case and keeping in view the specific statutory bar provided under Section 18 of the SC/ST Act and in the light of specific averments in the complaint made by the complainant in that case, it was observed that the petitioners are not entitled to anticipatory bail u/s 438 of the Code.

10. In *Mukesh Kumar Saini(supra)*, this Court observed that there cannot be any dispute about the proposition of law that anticipatory bail cannot be availed by the persons, who have committed the offences under the SC/ST Act. However, merely because of Section of the SC/ST Act mentioned in the FIR, that itself cannot be a ground to decline the pre-arrest bail. Section 3(1) of SC/ST Act was reproduced for considering the question whether on the allegations

made in the FIR, *prima facie*, any offence under Section 3(1)(x) is made out. The basic ingredients of the offence are:-

- a) there must be an intentional insult or intimidation with "intend" to humiliate SC/ST member by a non-SC/ST member;
- b) that insult must have been done in any place within the "public view".

11. On factual matrix of the case in that case, it was found that the humiliating words were not uttered in the "public view". Thus, the basic ingredients of the offence were not made out. Moreover, two cross cases were registered. Both the parties were injured. Section 3 of SC/ST Act was not initially mentioned in the FIR. As such, the application was allowed.

12. In *Manjeet Singh* (supra), the application for grant of anticipatory bail was moved by three persons, namely, Manjeet Singh, Sachin and Sagar. While observing that there were no charge against Sachin and Sager to the effect that they uttered any offending words under the SC/ST Act in public view, as such, they were ordered to be released on anticipatory bail. However, the application of *Manjeet Singh* was dismissed.

13. Coming to the factual matrix of the case, it is to be seen whether the complaint, *prima facie*, makes out a case under Section 3(1) of SC/ST Act. It is alleged in the complaint that the complainant belongs to scheduled caste while the petitioner belongs to Gujjar caste. It is alleged that the petitioner and his family members have been abusing the complainant and her family members by uttering filthy words referring to their caste by saying “Chamar” and “Chamariya”. Initially, the matter was compromised. On 15th November, 2011 again they were abused by referring to their caste besides giving her beatings, snatching her gold ear-rings and mobile etc.

14. Learned counsel for the petitioner has relied upon the status report filed by the Police before learned Metropolitan Magistrate for submitting that statements of some witnesses were recorded which revealed that it was a petty quarrel between Suman and the complainant and there was no allegation of uttering humiliating words.

15. However, learned Public Prosecutor for the State has also placed on record statement of two witnesses, namely, Sh. Bheem

Singh and Jabar Singh, which has corroborated the version of the complainant that the petitioner, his wife and daughter referred to the complainant as “Chamariya” and gave her beatings, insulted her and the same was witnessed by them.

16. A critical analysis of the evidence, which is on record, is not required to be gone into at this stage and Court is not expected to embark an inquiry as to whether the petitioner was present at the spot or not as alleged by him. While considering the application for bail, scope of appreciation of evidence and other material on record is very limited. The submission of the petitioner that he was not present at the spot as he had gone to distribute the milk at the relevant time is required to be proved by him during the course of trial. At present there is a statement of the complainant besides statements of Bhim Singh and Jabar Singh, which cannot be brushed aside. Similarly, the plea of the petitioner that the complainant was not paying rent to her landlord and he had accompanied the landlord to the house of the complainant and she was found indulging in committing direct theft of electricity which was objected, then the complainant became aggressive and started using filthy and abusive language again is at

best his defence which will be required to be proved during trial. Suffice it to say, at this stage, the allegations attract the provision of Section 3(1) of SC/ST Act besides the provision of IPC. As such, in view of the specific bar incorporated under Section 18 of SC/ST Act, the petitioner is not entitled to be released on anticipatory bail under Section 438 of the Code.

17. As regards release of co-accused on anticipatory bail, the orders have not been placed on record, as such, it is not clear as to on what grounds they were released on bail. Be that as it may, the fact remains that since as per the allegations made in the application, provisions of SC/ST Act are, *prima facie*, made out, as such, he is not entitled to be released on anticipatory bail.

18. The application is accordingly dismissed.

19. It is, however, clarified that the observations are confined only to the disposal of this petition and the learned Trial Court will be free to decide the case on merits.

20. *Dasti.*

**SUNITA GUPTA
(JUDGE)**

DECEMBER 11, 2013

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