

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM No. M-17083 of 2015 (O&M)

Date of Decision: 25.05.2015.

Kulbir Singh

... Petitioner

Versus

State of Punjab & another

... Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Onkar Singh, Advocate for the petitioner.

Mr. Prateek Pandit, Advocate for the complainant.

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TEJINDER SINGH DHINDSA.J.

The instant petition has been filed under Section 438 Cr.P.C. read with Section 482 Cr.P.C. seeking the concession of pre-arrest bail to the petitioner in cross case bearing Rapat No.71 dated 25.04.2015, under Sections 341/323/506/34 IPC read with Section 3(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in FIR No.14 dated 22.03.2015, registered at Police Station Bholath, District Kapurthala.

Counsel for the petitioner has been heard at length and the case paper book has been perused.

Perusal of the statement of Manohar Lal on the basis of which the cross case has been registered against the present petitioner would reveal that Manohar Lal had disclosed his caste to be balmiki and thereafter had stated as follows:

“Statement of Manohar Lal son of Late Makhan Singh caste Balmiki resident of Ramgarh, Police Station Bholath, District Kapurthala, aged about 46 years, Phone No.9815482529.

Stated that I am resident of the above said address and working as labourer. That about 10 years ago my father Makhan Sing son of Sadhu Ram who had been working as a masson during the digging of a bore in a well jointly owned by Satwant Singh son of Dharam Singh and Ajit Singh son of Bhola Singh resident of Ramgarh fell in the well and died. The owners of this well in order to compensate us gave Rs.48,000/- to then Sarpanch Kulbir Singh Khaira son of late Jawahar Singh resident of Ramgarh. Even after the lapse of 3 year this amount was not given to us. Regarding this the complaints were made to the police. Due to these complaints, he filed a suit for defamation against me in the Court and I was fined Rs.20,000/-. I respected the decision of the Court. Yesterday, on 21.03.2015 after about 7 P.M. when I was going on foot to collect the money from the place where my son has been working and when I was about to turn to the passage going from the main road Ramgarh to village in the meantime, Kulbir Khaira and his son Harbardan Singh Khaira came from from front then Kulbir Singh Khaira made remarks that "Kutia Churria have you seen my power and I with my influence got imposed fine upon you." Then I said to Kulbir Singh Khaira that Sardarji you are wise man, talk to the poor man sensibly. At this Kulbir Singh gave me slaps and we grappled with each other then son of Kulbir Singh went to his house to bring gun and I after rescuing myself from him went to take my son and while going Kulbir Singh hit datar on my head and which hit on the wrist of my left hand when I raised my hand to save my head. In the meantime, number of persons gathered there and the accused along with their arms fled away from the spot. Later on son of Kulbir Singh Khaira brought his gun however he returned when he found that his father is not there. That there were number of persons present there when Kulbir Singh used foul words for my caste and they also tried to stop him. Kulbir Singh Khaira and his son by using foul words against my caste and by injuring me has committed excesses upon me,

legal action may kindly be taken.

*Sd/-
Manohar Lal”*

The precise question as regards the entitlement of concession of anticipatory bail to an accused charged with an offence under the Indian Penal Code as also the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 came up for consideration before the Hon'ble Supreme Court of India in **Vilas Pandurang Pawar & another Vs. State of Maharashtra & another, 2012 (4) RCR (Criminal) 761** and it was held as follows:

“8) Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been prima facie made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail.

9) The scope of Section 18 of the SC/ST Act read with 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. Moreover, 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 Tribes 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.”

This Court is of the considered view that in the light of the specific statutory bar provided under Section 18 of the Scheduled Castes and Scheduled Tribes Act, the concession of pre-arrest bail cannot be granted to the petitioner.

Petition is, accordingly, dismissed.

25.05.2015

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**