

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. CRM-M-34701-2014

Bachittar Singh and another

..... Petitioners

Versus

Surjit Singh

..... Respondent

2. CRM-M-35531-2014

Baldev Singh and others

..... Petitioners

Versus

Surjit Singh

..... Respondent

Date of decision: 23.03.2015

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. BS Bajwa, Advocate for the petitioners (in both cases).

Mr. HS Sirohi, Advocate for the respondent-complainant (in both cases).

R.P. NAGRATH, J.

By this common order, CRM-34701-2014, filed by Bachittar Singh & Shamsher Singh and CRM-M-35531-2014 filed by Baldev Singh, Shangara Singh and Atinder Pal Singh, under Section 438 Cr.P.C. for grant of anticipatory bail, are being disposed of as these arise out of the summoning order dated 03.07.2014 passed by the Judicial Magistrate Ist Class, Batala, in a criminal complaint filed by respondent-Surjit Singh, under

Section 3 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act of 1989'). For brevity, the facts are being extracted from CRM-M-34701-2014.

I have heard learned counsel for the petitioners and learned counsel for respondent-complainant quite extensively.

Learned counsel for respondent-complainant vehemently contended that there is a clear bar to the applicability of Section 438 Cr.P.C. in respect of offence under Section 3 of the Act of 1989 by virtue of Section 18 thereof.

I am, however, of the view that if circumstances of the case so require, this Court can entertain and permit the application for grant of pre-arrest bail by exercising the powers under Section 482 Cr.P.C. The complaint Annexure P-1 was filed by the respondent-complainant under Section 3 of the Act of 1989 and Section 295-A of the Indian Penal Code (IPC). The learned Judicial Magistrate Ist Class, Batala on the basis of preliminary evidence found sufficient grounds to proceed against the accused under Section 3 of the Act of 1989 whereas for the offence under Section 295-A IPC it was observed that respondent-complainant failed to bring sufficient material and as such the complaint qua offence under Section 295-A was dismissed. The summoning order dated 03.07.2014 passed by the learned Magistrate is Annexure P-2.

Learned counsel for respondent-complainant relied upon a judgment of Hon'ble Supreme Court decided on 10.09.2012, in ***Special Leave Petition (CRL.) No. 6432 of 2012, (Vilas Pandurang Pawar and another Vs. State of Maharashtra and others)***, in support of his contention.

It may be seen that the said complaint was made for various offences under the Indian Penal Code, 1860 along with provisions of the Act of 1989, for which FIR No. 139/2012 was registered at Police Station Ahmednagar, Maharashtra. The present is a case where the summoning order was passed in a private complaint. Hon'ble Supreme Court observed in ***Vilas Pandurang Pawar's case (supra)*** that the High Court allowed anticipatory bail to 13 of the accused persons out of 15 and rejected the same in respect of two of the accused who were petitioners before the Hon'ble Supreme Court. The ratio of the judgment of Hon'ble Supreme Court was that it all depends upon the nature of averments made in the complaint whether to permit anticipatory bail or not.

The contention of learned petitioners' counsel was that the complaint has been filed on account of political rivalry emanating from Panchayat Elections held in November, 2012. It is further submitted that Hazara Singh S/o Aarjan Singh had filed a criminal complaint under Sections 452/323/427/354 IPC and Section 3 of the Act of 1989 against 6 persons including Khushkismat Singh S/o Jagir Singh. In the said case summoning order was passed against the accused persons on 17.08.2013 under certain sections of IPC and also under Section 3 of the Act of 1989. The present complaint is stated to be instituted after the summoning order passed in that complaint case and the summoning order dated 17.08.2013 passed in that complaint is Annexure P-4 which shows that the said complaint was filed on 05.08.2013. The instant complaint was instituted on 26.09.2013. The pointed attention has been drawn by learned petitioners' counsel to the fact that one of the witness examined by the complaint-respondent is Jagir Singh,

Lamberdar and he is the father of Khushkismat Singh, aforesaid one of the accused in a criminal complaint titled "Hazara Singh Vs. Khushkismat Singh and others. Therefore, it is submitted that complaint-respondent is the henchman of Jagir Singh aforesaid. Khushkismat Singh etc. filed CRM-M-13472-2014, for grant of pre-arrest bail under Section 438 Cr.P.C. read with Section 482 Cr.P.C. and this Court granted them interim bail in the said case on 23.04.2014 (Annexure P-5) and made absolute on 21.05.2014.

In CRM-M-35531-2014 filed by petitioners, namely; Baldev Singh, Shangara Singh and Atinder Pal Singh, this Court had directed the petitioners to be released on interim bail on their furnishing bail bonds to the satisfaction of trial Court while issuing notice of motion on 17.10.2014. Similar order was passed by this Court on 09.10.2014 in CRM-34701-2014 filed by petitioners, namely; Bachittar Singh and Shamsher Singh. All the petitioners in both cases are stated to have furnished the bail bonds to the satisfaction of trial Court.

In view of the above and without expressing any opinion on merits of the case, both the petitions are allowed and the interim bail granted to the petitioners vide orders dated 09.10.2014 passed in CRM-M-34701-2014 and 17.10.2014 passed CRM-M-35531-2014 is made absolute. It is directed that the petitioner shall continue to appear before the trial Court against the bail bonds to the satisfaction of the trial Court on or before the next date.

March 23, 2015
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(R.P. NAGRATH)
JUDGE