

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No.M-3786 of 2015

Date of decision : 25.3.2015

Banwari & others

.....Petitioner(s)

Versus

State of Haryana & anr.

....Respondent(s)

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Ashwani Bhardwaj, Advocate for the petitioners.

Mr. Anmol Malik, AAG, Haryana for respondent No.1.

Mr. Satya Pal Tyagi, Advocate for respondent No.2.

DARSHAN SINGH, J.

1. The present petition has been filed by the petitioners, namely, Banwari, Krishna, Vinod and Bhagat Singh under Section 438 read with Section 482 of the Code of Criminal Procedure, 1973 (in short 'the Cr.P.C') for grant of anticipatory bail, who have been summoned by the learned Judicial Magistrate 1st Class, Charkhi Dadri for the offences punishable under Section 323/506/34 of the Indian Penal Code (in short "the IPC") and Section 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'the Act').

2. As per the prosecution allegations, on 30.11.2008 at

about 4.30 P.M, the dispute took place on account of releasing the dirty water by accused petitioner-Krishna in front of the house of complainant/respondent No.2 as a result of which, the petitioners gave slaps and fist blows to the complainant and in common voice state to the complainant that “you and your family is 'Chamar' and you can't live without filth, for your prosperity, they are releasing this filth there”. They also abused the complainant with filthy language as 'Daidh', 'Kamina' and also threatened him to kill and to face dire consequences. The complainant was rescued by Om Parkash, Hosiya Singh-Namberdar, Rajender and Tunda Ram. On the basis of the complaint filed by complainant/respondent-Bhupender Singh, the petitioners were summoned for the aforesaid offences. Their application for grant of anticipatory bail has been dismissed by the learned Additional Sessions Judge, Bhiwani vide order dated 28.1.2015. Hence, this petition.

3. Learned counsel for the petitioners contended that the petitioners were admitted to interim anticipatory bail in this case vide order dated 6.2.2015. They have already complied with the aforesaid order. He further contended that even no prima facie case is made out against the petitioners. The complaint has been filed after about two months of the occurrence. The caste of the complainant is nowhere mentioned in the complaint to show that he belongs to the Scheduled Caste which was very essential. It is also not mentioned that the petitioners belong to the upper caste. It is also not mentioned that the petitioners have uttered the caste based remarks

in the public view. Mere allegations that the petitioners addressed and abused the complainant as 'Chamar', 'Daidh' or 'Kamina' will not attract Section 3(1) (x) of the Act. Thus, he contended that the bar of Section 18 of the Act is not applicable. The interim order of anticipatory bail should be made absolute. The petitioners have already appeared before the Court which passed the summoning order and have been admitted to interim bail.

4. On the other hand, learned Assistant Advocate General, Haryana assisted by Sh. Satya Pal Tyagi, learned counsel for the complainant, contended that after finding the prima facie case, the petitioners have been summoned by the learned Judicial Magistrate. They have not challenged the summoning order before any competent Court of law. The petitioners cannot be granted the concession of anticipatory bail in view of specific bar provided under Section 18 of the Act.

5. The aforesaid contentions have been duly considered. This fact is not disputed that Section 18 of the Act provides that nothing in Section 438 Cr.P.C shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act but this provision has been considered in various judicial precedents by the different Courts. The Full Bench of Rajasthan High Court in case **Virendra Singh versus State of Rajasthan 2000(4) RCR (Criminal) 53** has laid down that the bail application under Section 438 Cr.P.C can be considered if the FIR or the complaint makes out no offence under

the Act. A Division Bench of Karnataka High Court in case **N.B. Gungarakoppa and others versus State of Karnataka, 2002(4) RCR (Criminal) 77** has laid down that anticipatory bail in an offence under the Act is not totally barred. While the bar would apply in genuine cases, it would certainly not apply to the situation in which the provisions of the Act have wrongly been invoked or where the facts do not justify. It was further laid down that the Court can make some scrutiny to find out true nature and contents of the charge and not merely going by the words or the sections. The Hon'ble Supreme Court in case **Masumsha Hasanasha Musalman versus State of Maharashtra 2000 (2) RCR (Criminal) 116** has laid down that in order to attract the provisions of the Act, the offence punishable under the IPC should have been committed against victim on the basis that such a person belongs to Scheduled Castes or Scheduled Tribes. In case **Gorige Pentaiah versus State of Andhra Pradesh and others 2008(4) RCR (Criminal) 171**, the Hon'ble Supreme Court has laid down that it should be mentioned in the complaint that accused was not a member of Scheduled Castes or Scheduled Tribes and he intentionally insulted or intimidated with intent to humiliate the complainant in a place within public view. In case **Pala Singh versus State of Punjab 2000 (1) RCR (Criminal) 817**, this Court held that mere mentioning of Section 3 of the Act in the FIR cannot be a ground to refuse relief under Section 438 Cr.P.C. In case **Smt. Saroj Kumari versus State of Haryana 2002 (1) RCR (Criminal) 558**, this Court while dealing with the petition under

Section 438 of the Act for grant of anticipatory bail laid down that “Harijan” as such has not been included in Part-V of the First Schedule of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act 1976. The relief of the anticipatory bail has also been granted by this Court in cases **Gurdeep Singh versus State of Punjab 2002 (4) RCR (Criminal) 539**, **Om Parkash Sharma versus Union Territory Chandigarh, 2001 (3) RCR (Criminal) 840** and **Ajit Singh versus State of Haryana and another 2012 (1) RCR (Criminal) 507**.

6. In the instant case also, learned counsel for the petitioners has raised various debatable questions with respect to the applicability of the provisions of Section 3(1) (x) of the Act in view of the defects in the complaint pointed out by him above. So, in these circumstances simple accusation in the complaint may not be a ground to decline the concession of the anticipatory bail to the petitioners. Moreover, they have already surrendered before the Court which has passed the summoning order and have been admitted to interim bail in compliance of the order dated 6.2.2015 passed by this Court. Thus, they have joined the proceedings.

7. Consequently, the order of interim anticipatory bail dated 6.2.2015 is hereby made absolute and the petitioners will be bound by the conditions as prescribed under Section 438 (2) Cr.P.C.

March 25, 2015
ps

(DARSHAN SINGH)
JUDGE

