

**106 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM No. M-39269 of 2015.

Decided on: 20.11.2015.

Rajwant Kaur

... Petitioner

Versus

Rekha Rani

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Rishu Mahajan, Advocate,
for the petitioner.

JITENDRA CHAUHAN.J.(ORAL)

This is a petition under Section 438 Cr.P.C for grant of anticipatory bail in complaint case No. 27/2014 under Sections 323, 341, 354, 506, 149 IPC and under Sections 3(i)(Xi), 3(ii) (vii) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.

Learned Counsel for the petitioner, refers to Annexure P-4, FIR No. 123 dated 9.5.2015 under Sections 353/186 read with Section 34 IPC registered on the statement of HC Gurmit Singh, Police Station Shahkot, District Jalandhar to contend that the police party on the basis of information conveyed telephonically by the SHO, Inspector Bikramjit Singh to the complainant that Gora alias Joginder Singh s/o Ajit Singh was on his way to supply illegal liquor to a woman named Guddi, r/o Dharua Mohalla. The complainant, alongwith the PCR, reached the house of said Guddi at about 3:30 PM. The said Joginder Singh was in the process of parking his motorcycle opposite the house

of Guddi. While the complainant was in the process to nab the alleged Joginder Singh, Bholi w/o Hukam Chand came out of her house and started hurling abuses upon the complainant HC Gurmail singh, torn his clothes and held him by the neck. In the process, the button of his dress came out. The complaint made against the petitioner is a pressure tactic to take undue advantage in the aforesaid FIR. He further states that the petitioner acted on the orders of the then SHO Vikramjit Singh. No other point has been urged.

In the aforementioned FIR, it has been specifically reflected that Joginder Singh left his motorcycle there and ran away from the spot alongwith one heavy bag after pushing away head constable Kashmir Singh.

The perusal of the FIR, Annexure P-4, is suggestive of both the inaction and incapacity of the police. It has come in the FIR that the alleged supplier of liquor Joginder Singh ran away from the spot along with one heavy bag after pushing HC Kashmir Singh, leaving his motor cycle behind. It is not explained as to how a person carrying heavy bag on foot could escape in the presence of the police officials who had all the means and training to nab such people. Nothing has come on record with regard to the efforts made by the Police to nab him. From the record, it emerges that prima-facie, a satisfaction has been recorded by the summoning Court after recording the testimony of CW-1, the complainant Rekha Rani, CW-2 Vir Singh

and CW-3 Darbara Singh. As per the complaint, the co-accused Daljit Kaur used filthy language against the complainant in the name of her caste whereas, the other accused Geeta Rani, the petitioner Paramjit Kaur and co-accused Rajwant Kaur threw her on the ground and slapped her and used derogatory and insulting remarks in the name of her caste. The petitioner is a Police official. She is not known to the complainant, therefore, there does not appear to be any malafide to falsely implicate the petitioner in the instant case. The petitioner being a police officer is colleague of the complainant in FIR No. 123 dated 9.5.2014 and is certainly in a position to influence the process of investigation. Hon'ble the Apex Court in ***Vilas Pandurang Pawar Vs. State of Maharashtra, 2012(4) R.C.R. (Criminal) 761***, has held as under:-

“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.

*10) Learned counsel appearing for the petitioners, relying on the decisions of the Delhi High Court in **Dr. R.K. Sangwan & Anr. vs. State**, 2009 (112) DRJ 473 (DB) and in **Crl. M.C. No. 3866/2008 and Crl. M.C. No. 1222/2009 titled M.A. Rashid vs. Gopal Chandra** decided on 23.03.2012 and a decision of the Orissa High Court in **Ramesh Prasad Bhanja & Ors. vs. State of Orissa**, 1996 Cri. L.J. 2743, submitted that in spite of the specific bar under Section 438 of the Code, the Courts have granted anticipatory bail to the accused who were charged under Section 3(1) of the SC/ST Act.*

11) In view of the specific statutory bar provided under Section 18 of the SC/ST Act, the above decisions relied on by the petitioners cannot be taken as a precedent and as discussed above, it depends upon the nature of the averments made in the complaint.”

A perusal of the summoning order reveals that there

are specific allegations against the petitioner. Therefore, keeping in view the authoritative pronouncement in *Vilas Pandurang's case (supra)*, no case for grant of bail is made out. Consequently, the petition is dismissed.

20.11.2015.
SN

(JITENDRA CHAUHAN)
JUDGE