

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

CRM-M-7706-2015 (O&M)

Date of decision : 01.04.2015

Mithu Singh and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Amandeep Singh Cheema, Advocate,
for the petitioners.

JITENDRA CHAUHAN, J. (Oral)

This is the second petition filed under Section 438 of the Code of Criminal Procedure, for grant of anticipatory bail to the petitioners in criminal complaint No.07 of 16.10.2010, titled as 'Manjit Kaur Vs. Mithu Singh and others', pending in the Court of learned Chief Judicial Magistrate, Mansa, whereby, the petitioners have been summoned to face trial under Sections 323, 324, 452, 354, 148, 149 of the Indian Penal Code (for short, 'the IPC') and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for short, 'the SC&ST Act').

The learned counsel refers to Annexure P-3, the report

prepared by the Senior Superintendent of Police, Mansa, wherein, it has been referred that the complainant moved this application due to enmity, as the police personnel stopped her from making encroachment on the plot in question. The learned counsel also refers to order dated 13.02.2015 (Annexure P-5), passed by this Court, whereby, the co-accused, Harpal Singh and Jagdev Singh have been admitted to bail.

Heard.

Subsequent to the inquiry, on the complaint moved by the victim, wherein, she was examined as CW-1, along with Darshan Singh as CW-2 and Jagtar Singh as CW-3, the competent Court, after due application of mind and on the basis of specific allegations, has expressed prima facie satisfaction that the case of summoning against the petitioners is made out.

The case of the co-accused (two police personnel) is not comparable with that of the petitioners, who are the police officials, whereas, the petitioners are the interested persons. There are specific allegations that derogatory words in the name of caste of the complainant were used by the petitioners.

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.”

Therefore, keeping in view the authoritative pronouncement in *Vilas Pandurang's case (supra)*, no case for grant of bail is made out. Moreover, this is the second petition moved by the petitioners under Section 438 Cr.P.C. The summoning order was passed on 03.06.2014. The first petition was dismissed on 10.10.2014. The petitioners, instead of surrendering to the process of the Court, have successfully evaded the process of the Court.

In the circumstances, the present petition is hereby dismissed.

01.04.2015
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(JITENDRA CHAUHAN)
JUDGE