

Criminal Miscellaneous No.M-9201 of 2015 (O & M)
Date of Decision: April 23, 2015

Rajinder Singh Benipal & another

..... PETITIONERS

VERSUS

State of Punjab & another

..... RESPONDENTS

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CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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1. Whether Reporters of 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?

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PRESENT: - Mr. Ferry Sofat, Advocate, for the petitioners.

Mr. R.P.S. Sidhu, Assistant Advocate General,
Punjab.

Mr. A.D.S. Sukhija, Advocate, for respondent
No.2 - complainant.

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Jaspal Singh, J

1. This petition has been preferred by Rajinder Singh Benipal and Baljinder Singh Salana under Section 438 Cr.P.C. seeking pre-arrest bail, feeling apprehension of their arrest in case FIR No.28 dated March 3, 2015 under Sections 3 & 4 of

the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for brevity, 'Act'), registered at Police Station, Fatehgarh Sahib.

2. In response to notice of motion issued by this Court, Mr. R.P.S. Sidhu, Assistant Advocate General, Punjab, appeared for State and complainant is represented by Mr. A.D.S. Sukhija, Advocate.

3. Case of prosecution is that on January 30, 2015, Surinder Kumar, who is a retired Work Munshi from Public Works Department (B&R) and belongs to Ravidasiya caste, was sitting alongwith Avtar Singh Cheema (President of Class IV Employees Union), Mohan Singh (General Secretary), Ram Karan (Advisor) etc. in the office of Employees Union to celebrate birthday of Bhagat Ravi Dass where petitioners under the influence of liquor came and told that they would send all the officials of the department to jail. At that time, complainant disclosed to petitioners that neither he nor any other person present there has got any concern with the officers of department and they have assembled there only to celebrate the birthday of Bhagat Ravi Dass. They started inflicting fist blows to him (complainant) and also stated that they would teach a lesson to Chuhra Chamar by saying as to how to talk with

others, by using derogatory words qua his caste. They humiliated him in the presence of members present in meeting and other persons sitting there. Petitioner No.1 took out revolver from his waist and pointed the same towards his face but due to raising of noise by other persons, petitioners ran away from the spot while hurling threats that they would kill Chuhra Chamar.

4. On the basis of written complaint, case was registered and investigation was put into motion.

5. Contention of learned counsel for petitioners is that petitioner No.1 had sought information under the Right to Information Act, 2005 from Public Works Department (B&R), Sirhind Division, with regard to quotations of work done by the department. For that purpose, petitioner had to make lot of efforts but he only got 20% of information in this regard.

6. It has further been submitted by learned counsel for petitioners that petitioner No.1 had complained about work done by officers of PWD to DGP (vigilance) and PWD Minister, on the basis of which, an enquiry was conducted and seven officers/officials were placed under suspension. Officers who were suspended, were having grudge against petitioners and with their ulterior motive, by concocting a false story and bringing forward the complainant who is a retired employee of

the department, got registered instant case. Infact, complainant party pounced upon petitioners and caused injuries to them regarding which a case was registered against Rajinder Kumar and others. Neither any derogatory words were uttered by either of petitioners nor there was any such occasion. Moreover, petitioners are ready to join investigation and to abide by all terms & conditions imposed by this Court in case they are granted the concession of pre-arrest bail.

7. On the other hand, learned State counsel assisted by Mr. A.D.S. Sukhija, Advocate, for complainant, has opposed the petition contending that there is cogent, convincing and sufficient evidence collected by investigating agency which clearly makes out a case under Section 3(1)(x) of the Act. Thus, instant petition is liable to be dismissed in view of bar created by Section 18 of the Act which makes the provisions of Section 438 Cr.P.C. inapplicable. They, accordingly, prayed for dismissal of petition.

8. This Court has given an anxious thought to submissions made by learned counsel for parties and gone through record.

9. No doubt, Section 18 of Act provides that nothing in Section 438 Cr.P.C. shall apply in relation to any case

involving arrest of any person on an accusation of committing offence under this Act. The Hon'ble Apex Court has also observed in Shakuntla Devi vs. Baljinder Singh, 2013(2) RCR (Criminal) 882 that Section 18 of the Act creates a specific bar to the grant of anticipatory bail to a person against whom any offence is registered under the provisions of the aforesaid Act and, therefore no Court shall entertain an application for anticipatory bail *unless it, prima facie, finds that an offence under the Act is not made out.*

10. Thus, at this stage, it is to be seen whether prima facie offence under Section 3(1)(x) of Act is made out or not. A close scrutiny of FIR and other documents would show that ingredients which constitute an offence under Section 3(1)(x) of Act are not prima facie established. Though, during investigation of case, some evidence may be collected by investigating agency. At this stage, it is a debatable question. Moreover, there is a version and cross version case about the incident alleged to have taken place on January 30, 2015.

11. In the given circumstances, this Court is of the considered view that case is made out to exercise discretion envisaged under Section 438 Cr.P.C. Accordingly, petition is

allowed. In the event of arrest, petitioners shall be released on bail subject to the following conditions:-

- i) They shall make themselves available for investigation within seven days from the date of receipt of a certified copy of this order; and subsequent thereto, to join investigation as and when required to do so;
- ii) They shall not leave the country without the prior permission of the Court;
- iii) They shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police official.

12. While parting with order, it is made explicit that anything observed in this order shall have no bearing on the merits of the main case as the observation, if any, shall remain limited to the disposal of this petition.

April 23, 2015
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(Jaspal Singh)
Judge