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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: August 21, 2015

+ **CRL.M.C. 3338/2015**

PREETPAL SINGH WADHWA & ANR. Petitioners
Through: Mr. Pradeep Gaur & Mr. Sanjay
Srivastava, Advocates

versus

STATE (NCT OF DELHI) & ANR. Respondents
Through: Mr. Satish Narayan, Additional
Public Prosecutor for respondent-
State with ASI Jagjit Sangwan

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **JUDGMENT**
(ORAL)

Crl.M.A. No.11927/2015 (u/S 482 Cr.P.C.)

Allowed subject to all just exceptions.

CRL.M.C. 3338/2015 & Crl.M.A. No.11928/2015 (Stay)

Received on transfer.

In this petition, quashing of FIR No.523/2013, registered at police station Vikas Puri, Delhi in which charge-Sheet for the offence under Section 3(1) (x) of *The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989* has been filed, is sought on merits.

Learned counsel for petitioners submits that no offence under the aforesaid Act is made out as petitioner-accused did not know that the complainant was a scheduled caste and there are lots of improvements made in the prosecution version in this case. To submit so, learned counsel for petitioners places reliance upon decisions in *Mukesh Kumar Saini and Ors. v. State (Delhi Administration)* 2001 CrL L.J., *Smt. Deepa Bajwa v. State & Ors.* 2004 [3] JCC 1754 and Writ Petition (CrL.) N.1593/2006 titled *Ahwani Kumar v. State & Anr.* rendered on 9th January, 2009.

Upon notice, learned Additional Public Prosecutor for respondent-State submits that the matter is coming up on 24th August, 2015 before the trial court for appearance of petitioners and that charge in this case has not yet been framed and that petitioners have an alternate and efficacious remedy to urge the pleas taken herein before the trial court at the stage of hearing on the point of charge.

On this aspect, pertinent observations of the Apex Court in *Padal Venkata Rama Reddy Alias Ramu v. Kovvuri Satyanarayana Reddy & Ors.* (2011) 12 SCC 437, are as under: -

"13. It is well settled that the inherent powers under Section 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code (vide Kavita v. State and B.S.Joshi v. State of Haryana). If an effective alternative remedy is available, the High Court will not exercise its powers under this section, specifically when the applicant may not have availed of that remedy."

Applying the above-noted dictum of Apex Court to the facts of the instant case, this Court finds that since petitioner has an alternate and efficacious remedy available, therefore, this petition and application are disposed of with liberty to petitioners to raise the pleas taken herein before the trial court at the stage of hearing on the point of charge. Needless to say that this Court has not considered the case of the parties on merits and it is left open for the trial court to do so.

During the course of hearing, it was brought to the notice of this Court that to secure the presence of petitioner-accused, non-bailable warrants have been issued against him.

Learned Additional Public Prosecutor for respondent-State submits that petitioner's anticipatory bail has been already rejected by Sessions Court on 31st July, 2015 as there is no provision to grant anticipatory bail under *the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989*.

Learned counsel for petitioner maintains that this case is not covered by *the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989* as the necessary ingredients of the alleged offence are lacking. This is an aspect which goes to the root of the matter which is required to be considered while hearing petitioners at the framing of charge. In case petitioners choose to seek pre-arrest bail from this Court while maintaining that the provisions of *the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989* are not attracted in the instant case, then this aspect is also required to be considered in the said application. However, no case for invoking extraordinary inherent jurisdiction under Section 482 of Cr.P.C. of this Court is made out in this

petition, which is pre-mature.

With aforesaid observations, this petition and application are disposed of while leaving it open for the trial court to consider the case of petitioners on merits and with liberty to petitioner to seek pre-arrest bail from this Court.

(SUNIL GAUR)
JUDGE

AUGUST 21, 2015
r/s