

**IN THE HIGH COURT OF PUNJAB AND HARYANAT AT
CHANDIGARH.**

CRM-M No.1476 of 2015

Date of Decision:-14.01.2016

Mam Chand.

.....Petitioner.

Versus

State of Haryana & Anr.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Nipun Vashisht, Advocate for the Petitioner-Complainant.

Mr. Neeraj Poswal, AAG Haryana assisted by
ASI Suresh Kumar.

Mr. .Arun Yadav, Advocate for respondent no.2-accused.

JASWANT SINGH, J.(ORAL)

Prayer is under section 439(2) Cr.PC for cancellation of bail granted to the respondent no.2-accused Om Parkash vide order dated 11.12.2014 passed by the learned Sessions Judge, Rewari in Criminal Complaint No.68 dated 12.3.2012 under Sections 323 IPC and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

It is contended that learned Magistrate in the light of the evidence of the four Pws has summoned respondent no.2-accused Om Parkash regarding pointing out he caste of the complainant while quarrel at

the shop had summoned them. However, while granting anticipatory bail, learned Sessions Judge has totally ignored the said impact as also the mandate of the Hon'ble Supreme Court in **Bachu Das Vs. State of Bihar & Ors 2014(1) RCR (Criminal) 975.**

Lerned Counsel for the respondent no.2-accused Om Parkash concedes that in the original complaint filed before the police there was no reference at all of any member of the public including the said witnesses and, therefore, no offence was made out. He further submits that judgment of Hon'ble Supreme Court has been duly considered by the learned Sessions Judge while granting anticipatory bail in the face of prima facie no case being made out. The relevant para 7 is extracted below:-

“ I have perused the complaint. It is alleged that the applicant/accused gave beatings and uttered derogatory remarks against the complainant when the latter protested against the sale of land twice over by the applicant/accused. It is, thus, clear that the complainant was allegedly beaten not because he belongs to Scheduled Caste but because he complaint to the applicant/accused about the execution of the sale deed. There is absolutely no mentioning in the complaint that at the time of alleged crime the applicant/accused was aware of the fact that the complainant belongs to Scheduled Caste. Therefore, mere utterance “ DHEDO TUMHARI ITNE HIMMAT HO GAYI KI DUKKAN PER TAKAJA KARNE CHALE AAYE” does not amount to intentional insult within the meaning of section 3(1)(x) of the Act. Needless to say that prima facie it does not appear that the applicant/accused had intimidated or insulted the complainant with intent to humiliate him because of his being a member of scheduled caste. Although a detailed analysis on merits is not to be made at this stage, yet, it will not be out of place to mention

that there is a glaring discrepancy between the complaint lodged before the police and the one filed in the course in the sense that in the complaint to the police there is no reference to the presence of independent witnesses while in the complaint before the Court there is. This, to an extent, substantiates the contention that Subash and Mahesh have been introduced as an after-thought just to prove that the occurrence was made by the applicant/accused in public view. As such the ingredients of the offence under Section 3 of the Act are not available. Consequently, there is no impediment in considering the request for bail in anticipation of arrest of the applicant/accused. ”

A reading of the above reveals that discretion to grant pre-arrest bail has been exercised on sound judicial principles. Further after grant such concession, this petition though filed in January, 2015, but was not pressed as repeatedly adjournments were sought. Now after more than one year, it would not be just and fair to cancel the pre-arrest bail, moreso when no misuse of the same has pleaded or shown.

Dismissed.

**(JASWANT SINGH)
JUDGE**

January 14, 2016
Vinay