

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

**Criminal Misc.No.M-16169 of 2016(O&M)
Date of Decision : 08th November, 2016**

Raj Singh alias Raju

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Chanakya Pandit, Advocate
for the petitioner.

Mr. Kuldeep Tiwari, Addl. A.G., Haryana
for the respondent(s)-State.

AJAY TEWARI, J. (Oral)

The petitioner has preferred the instant petition under Section 438 Cr.P.C., seeking anticipatory bail in case FIR No.118 dated 05.04.2016, registered at Police Station Madlauda District Panipat, under Sections 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'the Act').

Learned counsel for the petitioner has argued that this case has a checkered history. It has come on the record that the complainant was working as labour in the field as well as in the house of the petitioner. Originally, the complainant made complaint (Annexure P-2) dated 08.03.2015, complaining only that the petitioner had abused her and no allegations under the Act were levelled against him. Two weeks thereafter, she gave another complaint (Annexure P-3) and levelled allegations that the

petitioner was blackmailing her and threatening her and had been spreading lies about her and her character. In the said application, she went on to say that her previous complaint was not being looked into and the police had not invoked the Act. Thereafter, on 05.04.2016, she made a fresh complaint and in this complaint she made detailed allegations for the first time about the petitioner having insulted her by using her caste name. Apart from this, in this complaint, she also went on to make serious sexual allegations against the petitioner and of even assaulting her. However, those allegations have been found false by the police.

In these circumstances, learned counsel for the petitioner has prayed that the order dated 24.05.2016, granting interim bail to the petitioner, be confirmed.

Learned State counsel has, however, pointed out to the stringent provisions of the Act which has specifically barred the grant of anticipatory bail. He, on instructions, also states that the petitioner has joined the investigation. Learned State counsel has relied upon the judgment passed in **Vilas Pandurang Pawar vs. State of Maharashtra** **2012 (3) SCC (Cri) 1062**, the relevant portion of which is quoted below:-

“9. 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.

10. 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

Criminal Misc.No.M-16169 of 2016(O&M)

-3-

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 an 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. The 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.”

On the basis of this judgment, learned counsel for the petitioner has argued that the Supreme Court has held that an application for anticipatory bail is not per se impermissible and in the present case, the Court cannot be blind to the fact that in the first two complaints, allegations under the Act were not levelled.

A perusal of the judgment of the Supreme Court reveals that despite the bar mentioned in the Act, an application for anticipatory bail may be entertained in exceptional circumstances when prima facie it appears that an offence under the Act has not been committed.

In my opinion, keeping in view the facts that originally in the first two complaints, the complainant had levelled no allegation against the petitioner under the Act; secondly, they have long known each other; thirdly even the prosecution has found that the very serious allegations of sexual abuse and of causing injuries were false; and without commenting on the merits of the case, I do not deem it appropriate to deny the concession of anticipatory bail to the petitioner.

Criminal Misc.No.M-16169 of 2016(O&M)

Accordingly, the instant petition stands allowed. The order dated 24.05.2016, granting interim bail to the petitioner, stands confirmed.

Needless to say that no observation made in this order will not effect the merits of the case.

08th November, 2016
mamta

(AJAY TEWARI)
JUDGE

Whether speaking

Yes/No

Whether Reportable

Yes/No