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

+ **BAIL APPLN. 61/2016**

ARUN KUMAR

..... Petitioner

Through : Ms.Divya Attri, Advocate.

versus

STATE AND ANR

..... Respondents

Through : Ms.Meenakshi Dahiya, APP.
Mr.Sunil Kapoor, Advocate with
Ms.Manu Bala, Advocate for the
complainant.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

ORDER

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15.07.2016

1. The petitioner seeks anticipatory bail under Section 438 Cr.P.C. in CC No.594/4/11 under Sections 406/506 IPC and Section 3 of SC/ST Act. Bail is opposed by the respondents.

2. I have heard the learned counsel for the parties including the counsel for the complainant and have examined the file. Learned counsel for the petitioner urged that ingredients of Section 3 of SC/ST Act are not attracted as the alleged 'offence' was not committed in the public view. The petitioner has been falsely implicated by the complainant as he was earlier involved in case FIR No.426/10 PS Uttam Nagar for the said incident. Learned counsel for the complainant stated that there is specific bar under Section 18 of the

Act whereby anticipatory bail can't be granted for commission of offence under Section 3 of SC/ST Act. A large crowd had gathered soon after the occurrence. Allegations against the petitioner are serious.

3. Admittedly, a case vide FIR No.426/10 under Sections 186/353/332/34 IPC at PS Uttam Nagar was registered against the complainant – Surender Kumar on the complaint lodged by the present petitioner on 26.12.2010. Subsequently, after a delay of about seven months the complainant filed a complaint case in which he levelled allegations against the petitioner for uttering caste related remarks on 26.12.2010. After recording statements of the complainant and the witnesses produced by him, the Trial Court vide order dated 08.05.2013 took cognizance for the offences under Sections 406/506 IPC and Section 3 of SC/ST Act.

4. On perusal of the record, it transpires that the number of the motorcycle which was allegedly repaired by the victim and for which repair charges were not paid to him has not been mentioned. Presence of CW-2 (Mitra Prakash) and CW-3 (Rajender Singh) at the time of incident was not claimed in the complaint. The petitioner is a constable posted in Delhi Police and was a beat officer in the area at the relevant time. Status report dated 01.08.2011 filed before the Court below reveals that on enquiry from the neighbours - Mohit @ Raju, Afsar Ali, Raghunandan and Narender Rishi, the allegations levelled by the complainant were not substantiated. The complainant was involved in case FIR No.477/07 under Sections 324/34 and FIR

No.96/10 under Sections 376/34 IPC at PS Uttam Nagar.

5. Since there is specific bar under Section 18 of the Act to decline anticipatory bail for commission of offence under Section 3 of SC/ST Act, without delving into detailed controversy, let the petitioner appear before the Trial Court on the date fixed. The petitioner shall move application for regular bail which shall be decided by the Trial Court on merits. In case of dismissal of the regular bail application, he won't be taken into custody and fifteen days protection from arrest shall be given to enable him to avail legal remedies.

6. The bail application stands disposed of in the above terms. The parties shall appear before the Trial Court on the date fixed.

7. Copy of the order be sent to the Trial Court.

S.P.GARG, J

JULY 15, 2016 / tr