

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

Criminal Misc. M- No. 16330 of 2017 (O&M)

Date of decision : May 26, 2017

Sukhwinder Singh @ Sukha

.....Petitioner

Versus

State of Punjab

....Respondent

Criminal Misc. M- No. 12624 of 2017 (O&M)

Sukhpal Singh

.....Petitioner

Versus

State of Punjab

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Amit Dhawan, Advocate for the petitioners.

Mr. Deep Singh, AAG, Punjab.

Mr. Prateek Pandit, Advocate for the complainant.

LISA GILL, J.

This order shall dispose of Criminal Misc. M- Nos. 16330 and 12624 of 2017.

Prayer in these petitions is for grant of anticipatory bail to the petitioners in FIR No. 78 dated 23.03.2017 registered under Sections 363, 366A, 376 IPC with Sections 3, 4 of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC/ST Act'). Sections 67, 67A of Information Technology Act, 2000 (for short 'IT Act') added later at Police Station Women Nakodar, District Jalandhar.

It is contended that the petitioners have not been named in the

FIR. The allegations are raised only against one Navjot Singh @ Jyoti, who is in custody. The FIR has been registered on a complaint submitted by the father of the alleged victim after she had returned home on the intervening night of 22/23.03.2017. It is after a number of days i.e. on 28.03.2017 that the alleged victim suddenly named six persons other than Navjot Singh @ Jyoti including the present petitioners. In the FIR, allegations were raised against Navjot Singh @ Jyoti to the effect that he took the victim to the tubewell of Jugraj Singh and committed the offence in question. When alarm was raised, few persons went to the tubewell and freed the victim. She thereafter returned home and informed her father about the incident. The FIR was then lodged.

In her statement under Section 164 Cr.P.C. recorded much later on 28.03.2017, the victim, however, stated that when she went out of her house to urinate at about 9.50 p.m. on 22.03.2017 Navjot Singh @ Jyoti came there, caught hold of her and closed her mouth with his hand. In the meantime his brother Sukhwinder Singh @ Sukha (petitioner in CRM-M No. 16330 of 2017) also came to the spot. Both of them forcibly picked her up and took her to some house (Haveli) in the village. The other accused namely Sukhwinder Singh @ Sukha, Jeeta son of Makhan Singh, Sabi son of Makhan Singh, Bhupinder Singh @ Bhinda son of Charan Singh and Navjot Singh son of Jeeta were present at this house. All of them violated her person forcibly. They also prepared a video of the act on their cell phones. Then all of them started quarrelling amongst themselves. It is stated by the victim that she escaped from there taking benefit of the quarrel between the accused persons. She came back home but did not divulge

anything to her family members at that time. It is stated that she disclosed the occurrence to her parents on the next morning and further revealed that she was threatened by the accused not to disclose the incident to anyone or they would kill her and her family. Accordingly, it is stated by the victim that action be taken against the accused.

Learned counsel for the petitioners submits that in fact the petitioners have been named due to their allegiance to the Akali party. They extended their support to the said party in the recent assembly elections. No such offence is shown to be committed by the said persons in the alleged video clip. The video merely reflects certain people knocking at the door of the tubewell and the victim as well as Navjot Singh coming out of the room in question. It is further submitted that the petitioners had in fact gone to free the prosecutrix/victim at the relevant time. They have unnecessarily and falsely been implicated in this case. It is further submitted that the medical evidence does not corroborate the version put forth by the victim in her statement under Section 164 Cr.P.C. No injuries – external or internal, were found present on the person of the victim. Learned counsel submits that a perusal of the FIR as well as the statements of the victim clearly show no case whatsoever is made out under the SC/ST Act against the petitioners. Therefore, there is no impediment in the grant of anticipatory bail to the petitioners. Reliance is placed on a decision of this Court in **Mohan Singh versus Satpal 2014 (28) R.C.R. (Criminal) 475** to say that there is nothing on record to suggest that the petitioners were even aware of the community to which the alleged victim belonged. No such averments are present either in the FIR or the statement of the victim under Section 164 Cr.P.C. Moreover, the petitioners have joined investigation. They are not involved

in any other case. It is, thus, prayed that these petitions be allowed.

Learned counsel for the State, on instructions from ASI Baldev Singh, verifies that the petitioners have joined investigation. Their mobile phones have been recovered. Their custodial interrogation, it is submitted, is not required. It is further verified by learned counsel for the State that the present petitioners are not found indulging in any offence in the said video. There are no allegations on behalf of the State that the petitioners are likely to abscond or that they are likely to dissuade the witnesses from deposing true facts in the Court, if released on bail.

Learned counsel for the complainant has disputed the facts regarding the video in question. It is, however, not denied that the said video clipping is now sent for forensic examination. Learned counsel for the complainant and the State are unable to deny that the petitioners were not named in the FIR initially but in the subsequent statement under Section 164 Cr.P.C. suffered by the victim on 28.03.2017.

I have considered the contention regarding the bar to the grant of anticipatory bail in cases under the SC/ST Act, but do not find the same to be applicable in the present case. This Court in Mohan Singh's case (supra) while referring to the decision of the Hon'ble Supreme Court in **Vilas Pandurang Pawar and Anr. v. State of Maharashtra and others** **2012 (4) R.C.R. (Criminal) 761** allowed the concession of anticipatory bail in a case under the SC/ST Act to the petitioner therein. It is observed that a duty is cast on the Court to verify the averments and find out whether an offence under the SC/ST Act is made out.

Prima facie there do not appear to be any allegations against the petitioners to invite the rigours of the provisions of the SC/ST Act in the

present case, though on considering the entire evidence, the learned trial Court may ultimately find the accused to be guilty.

Be that as it may, keeping in view the peculiar facts and circumstances noted above but without expressing any opinion on the merits of case, it is considered just and expedient to allow these petitions. Consequently, orders dated 11.05.2017 in Criminal Misc. M- No. 16330 of 2017 and dated 14.04.2017 in Criminal Misc. M- No. 12624 of 2017 are made absolute.

It is reiterated that none of the observations made herein above are a reflection on the merits of the case and shall have no bearing on the trial.

It is made clear that the petitioners shall not try to contact the victim or the witnesses in any manner – directly or indirectly.

May 26, 2017
rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes

Whether reportable : Yes/No