

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

CRM-M-29149-2017

Date of Decision: August 31, 2017

Harpreet Singh alias Kala

..... Petitioner

Versus

Jasdeep Kaur and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Amit Kumar Walia, Advocate for the Petitioner.

Mr. Ashok Bhardwaj, Advocate for Respondent No.1-
complainant.

SUDIP AHLUWALIA, J.

In this petition, the Petitioner seeks anticipatory bail under Section 438 Cr.P.C. in connection with complaint case No.70/2016 dated 16.08.2016 pending in the Court of Ld. Judicial Magistrate 1st Class Sangrur, under Section 506 of the Indian Penal Code (in short 'IPC') and Section 3(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'the Act').

2. In transpires that earlier the petitioner along with two other co-accused persons had filed *CRM-M-25045-2017* which was subsequently dismissed as withdrawn with liberty to approach the Ld. Court below on 18.07.2017. But the petitioner has re-approached this Court under Section 438 Cr.P.C.

3. At the outset, it may be mentioned that according to Section 18 of the Act, jurisdiction of the Courts under Section 438 Cr.P.C. to grant pre-arrest bail is barred.

4. It is, however, well-settled that such jurisdiction can be invoked if the FIR itself does not disclose the commission of the concerned offence. For these purpose, the necessary ingredients which constitute the aforesaid offence, must have to be satisfied, which are listed as follows -

- (i) *That the victim/complainant must be a member of the “Scheduled Castes and Scheduled Tribes”;*
- (ii) *That the offender should not be a member of the SC/ST; and*
- (iii) *That the offence/abuse is made with intent to insult the victim in a public place.*

5. Ld. counsel for the petitioner has cited three decisions in support of his prayer. In the case of “**Gorige Pentaiah Vs. State of A.P. & Others**” 2008 (4) RCR (Criminal) 171, the complaint under Section 3(1) (x) of the Act was quashed by the Hon'ble Supreme Court on the ground that it was not stated therein “*that accused was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate the complainant in a place within public view*”.

6. In the case of “**Dinesh @ Buddha Vs. State of Rajasthan**” AIR 2006 SC 1267, Hon'ble Apex Court had observed *inter alia* -

“15. Sine qua non for application of Section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of Scheduled Castes and Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not case of the prosecution that

the rape was committed on the victim since she was a member of Scheduled Caste. In the absence of evidence to that effect, Section 3(2)(v) has no application. Had Section 3(2)(v) of the Atrocities Act been applicable then by operation of law, the sentence would have been imprisonment for life and fine.”

7. Relying upon the aforesaid observations, the Allahabad High Court in its Appellate Judgment rendered in “**Durga Singh Vs. State of U.P.**” 2015 (26) RCR (Criminal) 510, modified the judgment of conviction by observing as follows -

“16. On the basis of above discussion it is explicitly clear that charged offence of mischief by fire had not been committed because victim was a member of SC/ST community. This offence appears to have been committed only because of dispute of title and possession of land over which victim's house is standing. In such a case offence punishable under Section 3(2)(iv) of Scheduled Castes or Scheduled Tribes Act is not been committed. Therefore the finding of trial Court holding the appellant guilty for the offence under SC/ST Act is erroneous and is liable to be set aside.”

8. While the aforesaid judgments cited on behalf of the Petitioner, the Hon'ble Supreme Court laid down the parameters regarding maintainability of a complaint or propriety of a conviction for the offence under Section 3(1)(x) of the Act, neither of these two decisions anywhere relates to the question of statutory bar against Section 438 Cr.P.C. in terms of the Section 18 of the Act. In this connection, however, Ld. counsel for the petitioner has cited a Division Bench decision of the Karnataka High Court in case of “**N.B. Gungarakoppa and others Vs. State of Karnataka**” 2002(4) RCR (Criminal) 77, wherein it was held

inter alia -

“While the bar (under Section 18) would apply in genuine cases, it would certainly not apply to situations in which the provisions of the Act have wrongly been invoked or where the facts do not justify - Court can make some scrutiny to find out true nature and contents of charge not merely going by words or sections - Application for bail can be filed either in sessions court or High Court.”

9. Ld. counsel for the Respondent/complainant has however, contended that the aforesaid decisions do not help the Petitioner in the present case. It has been submitted that the above Division Bench decision of the Karnataka High Court was pronounced in the year 2002. Subsequently however, the Apex Court in **“Vilas Pandurang Pawar and another Vs. State of Maharashtra and others”** 2012 (4) R.C.R. (Criminal) 761 by its judgment passed ten years later dismissed the S.L.P. in which, the two Appellants had been denied anticipatory bail by the Bombay High Court, although such bail under Section 438 Cr.PC had been granted to other 13 co-accused. The Hon'ble Supreme Court dismissed the S.L.P. By observing inter-alia -

“9. 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 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 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. 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.” (Emphasis added)

12. In view of the above discussion and in the light of the specific averments in the complaint made by the complainant-respondent No.3 herein, we are of the view that Section 18 of the SC/ST Act is applicable to the case on hand and in view of the same, the petitioners are not entitled to anticipatory bail under Section 438 of the Code. Accordingly, the special leave petition is dismissed. However, it is made clear that the present conclusion is confined only to the disposal of this petition and the trial Court is free to decide the case on merits.”

10. In this backdrop, the complainant's side has submitted that in the present case, there are direct allegations in the original Petition of complaint filed u/s 156 (3) Cr.PC (Annexure P-1) to indicate applicability of the offence u/s 3(1)(x) of the Act. We may therefore, advert to the relevant extracts of the original complaint, which are set out below -

“5. That then the above said accused person threatened the applicant that either to vacate the house of her own otherwise they will get forcible possession because we by keeping scheduled caste persons (chure chamar) in our basti do not want to get it habitat of chure chamar. Accused No.3 to 5 started proclaiming that the persons who are in the habit of disposing the waste of the people now are trying to mix-up with us and they are required to be removed from our locality. The applicant stated that I will make complaint against you to the police, then the above said accused persons gave threatening that chamariye you may do whatever you can, we will dispossess you from the house.

6. That on the same day the applicant in the evening after putting lock to her purchased house, went for her personal engagement and then she saw that the lock has been broken and the car of the applicant was parked outside the house and all the tyres were punctured and the articles lying inside the house were scattered. When the applicxant went inside of her house, she noticed that bed, mattresses two coolers, gas cylinder, gas stop and some house hold articles lying scattered in the house.

Applicant went to her father Raghu Nath at other house and accompanied him to the spot and in the meantime the accused persons came there and stated that it is just a trailer. We are Jatt and you chure chamar cannot compete us.

7. That accused no.1 told accused no.2 that you may push this chamari tedh on the ground, we will see as to who will help this Kutti chamari. Accused No.2 caught applicant from her hairs and started dragging her. Applicant raised rescue alarm bachao bachao and then people gathered there in which Jasvir Kaur wife of Gurdev Singh and Birbal Singh son of Sh. Niranjan Singh residents of Kartarpura Basti, Sangrur raised alarm Na Maro Na Maro. Then the accused person stated to the persons gathered there that we will not allow chure chamar kutte tedha to reside in our locality. Then accused no.3 Kala hurled filthy abuse and stated that churi chamari nu chure chamara di basti nahi mili, she has purchased the house in our area. Then accused no.4 stated that chureo government has given lift to you and due to that reason you are daring to sit with us and to take meal with us. It will be good for you to leave the house and went somewhere else. On seeing the gathering of people the accused persons ran away from the spot to their house.”

11. It can therefore, be seen that in great detail, the derogatory and insulting casteist abuses have been narrated in the FIR that the accused proclaimed themselves to be of superior caste (Jatt) and the complainant as 'chure chamar' is also mentioned explicitly apart from various derogatory term and that it has also been unambiguously alleged that the aforesaid acts were committed by the accused persons in front of the “persons gathered there”. So it cannot be said that the FIR *per se* shows that no offence u/s 3 (1)(x) of the Act is *prima facie* made out. Consequently, this Court is of the opinion that the petitioner would not be entitled to grant of anticipatory bail u/s 438 Cr.PC on account of the statutory bar of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, although the Trial Court

and without being influenced by any observations regarding the factual merits of the case as noted in this Order.

Dismissed.

**(SUDIP AHLUWALIA)
JUDGE**

August 31, 2017
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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |