

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

Criminal Misc. No.M- 32060 of 2017(O&M)

Date of Decision: October 25 , 2017.

Harwinder Singh @ Hinda PETITIONER (s)

Versus

State of Punjab RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. N.S.Dandiwal, Advocate
for the petitioner.

Mr. Saurav Khurana, DAG, Punjab.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Prayer in this petition is for grant of anticipatory bail to the petitioner in FIR No.86 dated 10.09.2015 under Sections 363/366A/376/34 IPC, Section 8 of the Protection of Children from Sexual Offences Act, 2012 and Section 3 (2-10) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, the 'SC/ST Act') registered at Police Station Ajitwal, District Moga.

This Court while issuing notice of motion on 08.09.2017 noted the contentions on behalf of the petitioner as under:-

“The petitioner in this case has been summoned by the

learned trial court to face trial in FIR No.86 dated 10.09.2015 under Sections 363/366A/376/34 IPC, Section 8 of the Protection of Children from Sexual Offences Act, 2012 and Section 3 (2-10) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 as an additional accused on an application under Section 319 Cr.P.C.

The petitioner was found innocent during investigation as it came to light that the petitioner was not present at the spot. His location was traced on the basis of his mobile phone. It is submitted that the petitioner, on being found innocent, had gone to Italy and it is for this reason that he could not appear before the learned trial court when summoned. The petitioner is ready and willing to appear before the learned trial court and face trial.”

Learned counsel submits that no offence whatsoever under the aforementioned provisions including the SC/ST Act is made out against the petitioner. Therefore, the bar for the grant of anticipatory bail to the petitioner is not attracted in the present case. 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 are no such allegations in the FIR which attract any of the provisions of the SC/ST Act. Moreover, the petitioner pursuant to aforesaid order dated 08.09.2017 has appeared before the learned Additional Sessions Judge, Moga on 16.09.2017. It is submitted that the petitioner undertakes to appear before the learned trial court on each and every date fixed and face trial. He further undertakes not to go abroad without prior permission of the learned trial court. Therefore, it is prayed that this petition be allowed.

Certified copy of the said order dated 16.09.2017, furnished in Court today, is taken on record subject to just exceptions.

Learned counsel for the State, on instructions from ASI Santokh Singh, is unable to deny that the petitioner has indeed appeared before the learned trial court pursuant to order dated 08.09.2017. It is further not denied that the petitioner was earlier found innocent during investigation.

There are no allegations on behalf of the State that the petitioner is likely to dissuade the witnesses from deposing true facts in the Court, if released on bail.

I have also 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. Moreover, the petitioner has admittedly appeared before the learned trial court pursuant to order dated 08.09.2017 and admitted to interim bail.

Keeping in view the facts and circumstances as above but without commenting upon or expressing any opinion on the merits of the case, this petition is allowed. Consequently, interim bail afforded to the petitioner –

Harwinder Singh @ Hinda by the learned trial court on 16.09.2017 be made absolute subject to the petitioner furnishing fresh bail bonds and surety to the satisfaction of the learned trial court. The petitioner shall not leave the country without prior permission of the learned trial court.

It is clarified that none of the observations made hereinabove shall be construed to be a reflection on the merits of the case. The same are solely confined for the purpose of decision of the present petition.

October 25 , 2017.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No