

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

**Crl. Misc. No.M-33026 of 2016 (O&M)
Date of Decision: August 24, 2017**

Sapna Chaudhary

.....PETITIONER(s).

VERSUS

State of Haryana

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. P.S. Hundal, Senior Advocate with
Mr. Dinesh Trehan, Advocate
for the petitioner (s).

Mr. Ashish Yadav, Addl.A.G. Haryana.

Nawab Satpal Tanwar-complainant in person.

SURINDER GUPTA, J.(Oral)

The present petition has been filed under Section 438 Code of Criminal Procedure for grant of anticipatory bail to the petitioner in case FIR No.508 dated 14.07.2016 registered for the offences punishable under Sections 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,1989 (for short-SC/ST Act), at Police Station Sector 29, Gurgaon.

Heard.

Petitioner as allowed interim bail vide order dated 28.09.2016,
which reads as follows:-

“Learned counsel for the petitioner contends that the composition i.e. 'Ragni' sung by her, on the basis of which FIR No.508 dated 14.07.2016 has been registered was composed more than five decades ago and

has been repeatedly sung by number of artists. The petitioner was called to sing on the occasion of the birth ceremony of Kartik, grandson of Ms. Ramwati Yadav on 17.02.2016. The singing of the 'Ragni' in question has never been objected to by any member of the society. However, to assuage the feeling of any intentional hurt to the complainant, the petitioner has tendered an unconditional apology through affidavit (Annexure P-3) which reads as under:-

“That my intention was not to hurt the feelings of anyone, by singing this Ragni and after singing it, a controversy arose and for that I felt sorry before the Dalit community and again I beg pardon from Dalit community. The controversy which arose in Dalit community by singing this Ragni by me, as a matter of fact, my intention was not to hurt the feelings of anyone.

That I went alongwith the abovesaid affidavit in the presence of many persons at the residence of Ranbir Singh at Khandsa, Gurgaon, where the people from Dalit community were sitting. Nawab Satpal Tanwar did not turn up even on the asking of community people.”

On the other hand, learned counsel for the complainant states that the complainant has been receiving continuous threats to withdraw the complaint and certain false complaints have been filed against him. The life and liberty of the complainant is threatened at the hands of the petitioner and her supporters. The certain conversation in this context has also been recorded by him.

Notice of motion.

At the asking of the Court, Mr. Saurabh Mohunta, DAG, Haryana, accepts notice on behalf of the

respondent-State. A complete copy of the paper book has been furnished to the learned State counsel, in the Court.

Meanwhile, in the event of arrest of the petitioner by the Arresting Officer, she shall be released on interim bail subject to the following conditions:-

1. That she shall make herself available for interrogation by a police officer as and when required;
2. That she shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer and;
3. That she shall not leave India without prior permission of the Court.”

FIR was registered on the complaint by Satpal Tanwar pertaining to the incident dated 17.02.2016, where the complainant, who is *Haryanvi* Dancer and Singer was called on the birth-day party of grand son of Ramwati Yadav at village Chakarpur, District Gurgaon. There she sang a *Ragni* “*Jaat Paat Ka Sang Bigargaya*”. Complainant has alleged that *Ragni* sang contained caste related words like “*Pad likh ke Taraqui kar gai ya Bawali Jaat Chamaran ki*” to insult a particular schedule caste. The complainant has alleged that use of words “*chamar*” and “*Bawali Jaat Chamaran Ki*”, in *Ragni* has insulted this caste in the public gathering. This *Ragni* was recorded and also shown in social sites and Youtube etc.

Learned counsel for the petitioner has argued that firstly, the petitioner has not committed any offence under the provisions of SC/ST Act and secondly she had sung a *Ragni* composed decades ago by a noted and reputed Haryanavi writer Jagdish Chander Vats. He has relied on the

observations of Kerala High Court in case of *E.Krishnan Nayanar Vs. Dr. M.A. Kuttappan, Member Kerala Leg. Assembly 1997 (3) R.C.R. (Criminal) 622*, wherein some caste related words were used in public meeting and it was observed that when the person, who is claiming to have been insulted as per the provisions of Section 3 (x) (now Section 3(r) after the amendment vide Act No.1 of 2016 w.e.f. 26.01.2016), must have been insulted within public view. An old *Haryanvi Ragni* was sung in a private birth-day function. The entire *Ragni* deals with status of various castes and communities and the prevailing condition in the society at the relevant time. Jagdish Chander Vats had dealt with the political, social and economic condition of the society, wherein, he has also dealt with status and development made by the *Harijans, Barbers, Lohars, Muslims, Kumhars (potters), Rajput* etc. Neither the intention of the writer nor the intention of singer was to defame any person or a community.

Learned State counsel and complainant, who is present in person in the Court, have argued that *Ragni* of Jagdish Chander Vats was about 50 years old and in his *Ragni*, the words '*Bholi Jaat Chamaran ki*' was changed by words '*Bawali Jaat Chamaran ki*' by the singer. The intention of the petitioner was to defame a particular caste by addressing it as *Bawali* (idiot), as such the petitioner has committed the offence punishable under Section 3(r) of the SC/ST Act and is not entitled to the benefit of anticipatory bail as the same is barred under Section 18 of the SC/ST Act.

Section 3(r) (s) of the SC/ST Act reads as follows:-

“3. Punishments for offences of atrocities.-(1)

Whoever, not being a member of the Scheduled Caste or a Scheduled Tribe.-

(r) intentionally insults or intimidates with intent to humiliate **a member of Scheduled Caste or a Scheduled Tribe in any place within public view;**

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;

.....
shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.”

A question, which calls for answer in the facts and circumstances of the case is as to whether the *Ragni* sung by petitioner in a private birth-day function, where the complainant was not even present, attracts the provisions of Section 3(r)(s) of the SC/ST Act. In the similar circumstances, a Bench of Kerala High Court in case of ***E.Krishnan Nayanar Vs. Dr. M.A. Kuttappan, Member Kerala Leg. Assembly (supra)*** while quashing the proceedings against the petitioner, who had been attributed some caste related words in public meeting, observed as follows:-

“18. As stated by me earlier the words used in sub-section (x) are not 'in public place', but 'within public view' which means the public must view the person being insulted for which he must be present and no offence on the allegations under the said section gets attracted. In my view the entire allegations contained in the complaint even if taken to be true, do not make out any offence against the petitioner.”

Despite grant of opportunity, learned State Counsel has not been able to produce any book, where the original *Ragni* of Jagdish Changer Vats was published to ascertain actual words he used in the *Ragni* to look into allegation of change of word “*Bholi*” to “*Bawli*”. Learned State

counsel has given me the print out taken from the internet website which contains word '*Bholi*' instead of '*Bawli*', which is not relevant at this stage as authenticity of the website from where this print was taken has no proof or certificate. It is otherwise also a fact to be seen as to whether in the context of *Ragni* words "*Bawli*" means 'idiot' or 'simpleton'.

Keeping in view the above facts, when the very commission of offence under Section 3(r) of the Act is in dispute, the declining of anticipatory bail to the petitioner will not be in the interest of justice, particularly when she has already tendered unconditional apology through affidavit Annexure P-3.

Taking note of the above facts but without expressing any opinion on the merits of the case, this petition is allowed and the order dated 28.09.2016, is made absolute till the presentation of challan, subject to the following terms:-

- (i) that the petitioner shall make herself available for interrogation by the police as and when required;
- (ii) that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the accusation against her so as to dissuade him from disclosing such facts to the Court or to any police officer;
- (iii) that the petitioner shall not leave India without the prior permission of the Court;
- (iv) that the petitioner will seek regular bail on the presentation of challan in Court.

August 24, 2017
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***