

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

**Criminal Misc. No. M-46800 of 2016
Date of Decision : January 16, 2017**

Raj Kishan @ Bittu..... Petitioner

VERSUS

State of HaryanaRespondent

CORAM : HON'BLE MRS. JUSTICE LISA GILL

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?

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Present: Mr. Abhimanyu Singh, Advocate
for the petitioner.

Mr. Sanjay K. Saini, AAG, Haryana,
for the State/respondent.

Mr. G.S.Sandhu, Advocate
for the complainant.

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LISA GILL, J. (Oral)

This petition has been filed under Section 482, read with Section 438 Cr.P.C. praying for grant of anticipatory bail to the petitioner in FIR No. 321 dated 25.12.2016 registered under Section 323, 354 (A) (1), 506 IPC and Section 3 of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the SC & ST

Act) at Police Station Naraingarh, Distt. Ambala.

Learned counsel for the petitioner submits that no offence whatsoever is made out under Section 3 of the SC & ST Act. Therefore, the bar of Section 18 of the said Act is not applicable. Furthermore, this petition has been moved under Section 482 read with Section 438 Cr.P.C. He relies on the judgment of this Court in Crl. Misc. No. M-18827 of 2012 titled as ***Yashpal Kaushal v. State of Punjab*** decided on 20.9.2012 (Annexure P2) and ***Pishora Singh v. State of Punjab*** 2002 (2) R.C.R. (Criminal) 215 (Annexure P4) as well as the judgment of Jharkhand High Court in ***Ram Kumar Sinha v. State of Jharkhand*** 2005 (4) R.C.R. (Criminal) 575. It is vehemently argued that the alleged incident took place on 23.12.2016 whereas the FIR has been registered on 25.12.2016 which proves that no such incident, in fact, took place. There is no medico-legal evidence to substantiate the claim of the complainant. Furthermore, in case the occurrence took place at a public place how is it possible that there are no witnesses. It is argued that the petitioner is suffering from a psychiatric problem. He is mentally retarded. Reference is made to a Certificate dated 4.1.2017 i.e. after recording of the FIR. It is, thus, prayed that the petition be allowed.

Learned counsel for the State, on instructions from ASI Jai Gopal, Police Station Naraingarh, submits that the said Certificate dated 4.1.2017 was issued by the General Hospital, Ambala City, subsequent to filing of the FIR. It is certified by Dr. K.S.Rana, Psychiatrist, General Hospital, Ambala City, that disability of the petitioner was assessed at 35% and no previous record was produced by the petitioner during examination.

There are specific allegations against the petitioner which constitute an

offence under Section 3 of the SC & ST Act. There is no ground whatsoever for the grant of anticipatory bail.

Learned counsel for the complainant has also opposed this application.

There is no dispute with the contention of learned counsel for the petitioner that where totally *mala fide* and vexatious allegations are made and the misuse of the law is apparent, the Court can interfere to afford interim relief to the accused. This has been so observed by this Court in ***Yashpal Kaushal v. State of Punjab*** decided on 20.9.2012 (Annexure P2) while relying on the judgment of the Supreme Court in ***Siddaram Setingappa Mhetre v. State of Maharashtra*** 2011 (1) RCR (Criminal) 126 as well as other judgments. However, the facts and circumstances of the present case do not call for any interference by this Court.

Heard learned counsel for the parties.

In the above said FIR, the allegations against the petitioner are that when the complainant was going out for a walk with her daughter on 23.12.2016 at about 6:00 PM the petitioner teased the complainant and her daughter. He tried to commit rape. When the complainant objected, he physically abused the complainant and her daughter mercilessly. They were hit by fist blows by the petitioner. The complainant was dragged by her hair by the petitioner. She was abused by calling her “chamari” “gindal” and “dhedh”. The petitioner threatened to kill her and members of her family with a revolver. He also threatened to carry her away. The complainant and her daughter somehow managed to escape and came back to their house. The petitioner still followed them, came into their house, beat them again

and their clothes were torn by him. The complainant and her family members were in shock and were unable to come out of their home till 24.12.2016 when the complaint was lodged.

Section 3(W) of the SC & ST Act reads as under:-

“(w)(i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent;

ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.

Explanation – For the purposes of sub-clause (i), the expression “consent” means an unequivocal voluntary agreement when the person by words, gestures, or any form of non-verbal communication, communicates willingness to participate in the specific act:

Provided that a woman belonging to a Scheduled Caste or a Scheduled Tribe who does not offer physical resistance to any act of a sexual nature is not by reason only of that fact, is to be regarded as consenting to the sexual activity:

Provided further that a woman's sexual history, including with the offender shall not imply consent or mitigate the offence.”

The petitioner and the complainant belong to the same village,

therefore, it cannot be said that no offence under Section 3 of the SC & ST Act is made out.

Furthermore, a perusal of the averments made in para 4 of the petition negate the argument of the counsel for the petitioner that no such incident as alleged in the FIR ever took place. It is stated in para 4 that after the alleged incident a Panchayat was convened in the village on 23.12.2016 itself where a compromise was arrived at between the parties. No such serious allegation had been levelled against the petitioner but in order to extort money from the petitioner the complainant party lodged the above said FIR on 24.12.2016. It is pertinent to note that in case no such incident had taken place, there was no question of convening a Panchayat in the village.

Another argument vehemently raised by the learned counsel for the petitioner is that the petitioner is suffering from some psychiatric disorder. He is undergoing relevant treatment at the Government Hospital, Sector 6, Panchkula. Reference is made to a Medical Certificate dated 4.1.2017 issued by the Civil Hospital, Ambala City. As noted above, the said Certificate has been issued subsequent to the registration of the FIR. No previous record has been produced either before the Doctor or even before this Court. Furthermore, in case the petitioner is indeed suffering from a psychiatric disorder, it is not understandable as to how he has sworn his affidavit in support of the present petition.

Keeping in view the facts and circumstances above, I do not find any ground for affording the concession of anticipatory bail to the petitioner.

Consequently, finding no merit in this petition, the same is

dismissed. However, any observation made in this order shall not be taken to be an expression of opinion on the merits of the case.

16.1.2017
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(LISA GILL)
JUDGE

Note: Whether speaking/reasoned	Yes / No
Whether Reportable:	Yes / No