

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRL. MISC. No.M-7354 OF 2017
DATE OF DECISION : 17th AUGUST, 2017

Naresh Kumar @ Meenu Chopra & another

.... Petitioners

Versus

Jaswant Singh

.... Respondent

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

* * * *

Present : Mr. S. S. Bains, Advocate for the petitioner.

Mr. Arun Takhi, Advocate for the respondent.

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A. B. CHAUDHARI, J. (ORAL)

The petitioners have filed this petition under Section 438 Cr.P.C. seeking anticipatory bail in criminal complaint bearing CIS No.125 dated 03.09.2013 titled *Jaswant Singh versus Naresh Kumar @ Meenu Chopra & another* in which they have been summoned under Sections 323, 325, 382, 352 & 506 IPC and Section 3 of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act (in short, the SC & ST Act), pending before the Court of Ms. Daisy Bangarh, JMIC, Hoshiarpur.

Heard learned counsel for the rival parties.

Learned counsel for the complainant restricted his submissions qua Section 18 of the SC & ST Act, by which a bar is provided in the matter of grant of anticipatory bail in respect of the complaint under SC & ST Act and has cited two judgments of the Supreme Court i.e. *Bachu Das versus State of Bihar and others, 2014(1) RCR (Criminal) 975* and *Manju Devi versus Onkarjit Singh Ahluwalia*

@ **Onkarjeet Singh & others, 2017(2) R.A.J., 509**, in support his contention. He submitted that the complainant had filed report to the concerned police station in respect of the offences in question, including the offence under Section 3 of the SC & ST Act but the police did not take cognizance and did not take any action and that is why the complainant was compelled to file private complaint before the competent Court in which summoning order has been issued against the petitioners.

The plea for anticipatory bail made by the petitioners was rejected by the trial Court in view of the bar under Section 18 of the SC & ST Act and therefore, it is submitted that the bar equally applies in the present matter and the petition for anticipatory bail should be rejected.

Per contra, learned counsel for the petitioners has submitted in petition that the complainant lodged false report against the petitioners with the police station which did not take action because they found no substance in the report lodged with the police station. The complainant having failed, thereafter filed a private complaint before the special Court, which then issued the summoning order and as a result the petitioners have applied for anticipatory bail before this Court. He therefore, prayed for grant of anticipatory bail.

Following is the relevant paragraphs from the judgment of Apex Court in the case of **Bachu Das versus State of Bihar and others**:

“Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the Court to verify the averments in the complaint and to find out whether an offence under

Section 3(1) of the SC/ST Act has been *prima facie* made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail.

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 an 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. The 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.”

The Apex Court in the case of ***Manju Devi versus***

Onkarjit Singh Ahluwalia @ Onkarjeet Singh & others, has

followed the decision made in the case of ***Bachu Das (supra)*** and ***Vilas Pandurang Pawar and another versus State of Maharashtra and others, (2012)7 SCC 795***, in which it is held that prima facie case has to be found out, which reads thus:

12. It is undoubtedly true that Section 438 of the Code, which is available to an accused in respect of offences under the IPC, is not available in respect of offences under the SC/ST Act. The offences enumerated under the SC/ST Act fall into a separate and special class. Article 17 of the Constitution expressly deals with abolition of ‘untouchability’ and forbids its practice in any form and also provides that enforcement of any disability arising out of ‘untouchability’ shall be an offence punishable in accordance with law. The offences, therefore, which are enumerated under Section 3(1) of the SC/ST Act arise out of the practice of ‘untouchability’. It is in this context that certain special provisions have been made in the SC/ST Act, including the impugned provision under Section 18 which is before us. The exclusion of Section 438 of the Code in connection with offences under the SC/ST Act has to be viewed in the context of the prevailing social conditions which give rise to such offences, and the apprehension that perpetrators of such atrocities are likely to threaten

and intimidate their victims and prevent or obstruct them in the prosecution of these offenders, if the offenders are allowed to avail of anticipatory bail.”

The Apex Court then found thus in para 19:

“19. It is clear that learned Magistrate carefully perused the complaint as well as the statement of the complainant and arrived at a conclusion that a prima facie case is made against the respondents which was upheld in revision before the Sessions Court and even in the High Court. With regard to the plea that the complaint filed by the complainant is false and malicious and to wreck vengeance by the brother of the respondent No.1 herein, we are of the view that it cannot be looked into at the stage of taking cognizance and issue of process and the mala fide or bona fide of a case can only be taken into consideration at the time of trial.”

Section 18 of the Scheduled Castes and Scheduled Tribes

Act read thus:

“18. Section 438 of the Code not to apply to persons committing an offence under the Act. – Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.”

It is true that Section 18 of the SC & ST Act provides for a

bar in the matter of grant of anticipatory bail since the summoning order

under Section 3 of the SC & ST Act has been made against the petitioners who have been summoned by the trial Court. Looking at the ratio of the decision of the apex Court in the case of ***Bachu Das (supra)*** and particularly in para 7 thereof the bar under Section 18 of the SC & ST Act cannot be read as a blanket and straightjacket bar. As per the decision of the Apex Court as stated in para seven quoted above, a duty is cast on the Court to verify the averments in the complaint and to find out whether the offence under Section 3 of the SC & ST Act has *prima facie* been made out.

In other words, the Apex Court has insisted that the Court must verify first about the existence of *prima facie* case under Section 3 of the SC & ST Act before the projection of bar under Section 18 of the SC & ST Act in the matter of grant of anticipatory bail. I am, therefore, not inclined to accept the submissions made by learned counsel for the complainant about the blanket bar under Section 18 of the SC & ST Act.

Having thus stated the position of law as above, I proceed to find out whether *prima facie* case exists. In the private complaint case filed by the complainant, the heading and the averments in paragraphs 4 & 5 are as under:

“COMPLAINT UNDER SECTIONS 452, 323, 148,
149, 325, 506, 382 IPC AND UNDER SECTIONS
25/54/59 ARMS ACT AND SECTION 3 OF THE
SC & ST ACT.

.... xxx xxx The accused Meenu Chopra and
Sukhjinder Singh both alighted from the above said
car and forcibly and unlawfully entered into the shop

of the complainant. Meenu Chopra accused started hurling filthy abuses in the name of caste to the complainant by saying that “CHAMARAN DA KEE KAM HAI KE MERO KOLON PAISE LAIJAN”. At the same time accused Sukhjinder Singh also hurled filthy abuses in the name of the caste of the complainant by saying that “IS KUTTE CHAMAR NON AJJ SADE KOLON PAISE MANGAN DA MAJA CHAKHA DEO”. Upon which the accused No.1, who was armed with base ball gave a blow with base ball which hit on the left hand wrist of the complainant..... xxx..... xxx.....

5. That both the accused intentionally and willfully with an intention to lower down the reputation of the complainant in the eyes of public and with an intention to humiliate the complainant in the presence of public hurled filthy abuses in the name of caste of the complainant as stated above by which both the accused have committed the offence under Sections 452, 323, 148, 149, 325, 506, 382 IPC and under Sections 25/54/59 Arms Act and Section 3 of the SC & ST Act.”

Section 3 has two sub-Sections 1 and 2. Then sub-Section 1 has clauses (i) to (xv), and now after amendment w.e.f. 26.01.2016 clauses above have been substituted as (a) to (zc).

Thus for various acts of commissions and omissions specific offences have been provided. However, in the complaint case what is stated is Section 3 without naming any particular clause thereof.

These are the only averments pertaining to the offences under Section 3 of the SC & ST Act. The averments made in paragraph 5 are in the form of conclusion while averments in para 4 quoted above relates to the description of the offence in question. It is clear from the averments in para 4 that the accused Meenu Chopra and Sukhjinder Singh entered the shop of the complainant and thereafter they started hurling abuses in the name of caste. In other words, the abuses in the name of caste were given in the shop of the complainant. This Court repeatedly asked the counsel for the complainant to point out the exact Clause of Section 3(1) under which the offence was committed. Neither from the complaint nor from the summoning order, the counsel for the complainant could point out any specific clause. This Court, therefore, undertook the exercise to find out from the above averments as to the offence which would be constituted. This Court finds from the above averments that the offence that can be said to have been made out, would be under Section 3(1)(x) (old) and now 3(1)(r) (new) of the SC & ST Act, 1989 (amended), which reads thus:

3(1)(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.

The reading of the above provision clearly shows that the action on the part of the accused to insult or abuse in the name of caste

must take place in public view. The averments however show that in the private shop of the complainant the accused persons entered and hurled the abuses in the name of caste, which place cannot be said to be in public view.

In my opinion, therefore, the verification of the averments of the complaint show that no prima facie case is made out against the petitioners for offence under Section 3(1)(r) of the SC & ST Act. Therefore, the bar under Section 18 of the SC & ST Act would not come into the play. In the result the petition for grant of anticipatory bail will have to be allowed. Hence, I make the following order:

ORDER

- (i) CRL. MISC. No.M-7354 OF 2017 is allowed.
- (ii) Interim order dated 06.03.2017 is made absolute.

17th AUGUST, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned: **Yes**

Whether Reportable: **Yes**