

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

CRM-M-37731-2017

Date of Decision :-30.1.2018

Bhagat Ram

.....Petitioner

Versus

State of Punjab

.....Respondents

CORAM:- HON'BLE MR. JUSTICE H.S. MADAAN

Present: Mr.Anil Kumar Sagar, Advocate
for the petitioner.

Mr.Ramandeep Sandhu, Sr.D.A.G., Punjab.

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

H.S.MADAAN, J. (ORAL)

The instant petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by petitioner Bhagat Ram, an accused in FIR No.37 dated 28.2.2017 under Section 3(X) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered with Police Station Phase 1, District SAS Nagar, Mohali.

Briefly stated, the facts of the case as per prosecution version are that Sh.Raghubir Singh son of Joginder Singh, resident of village Kheda, Tehsil Kharar, Mohali and Sh.Surinder Kumar son of Sh.Dalip Chand, resident of Nawashahar had submitted a written complaint to the police stating therein that Bhagat Ram son of Babu Ram

along with three persons unknown to him used casteist words against him; that the complainants has been working in WWICS company; that on 4.4.2016 at about 2:50 p.m. while they were working in the office, then Bhagat Ram accompanied by three other persons came there entered room of their officer Rajiv Bajaj and started abusing him; that when they tried to dissuade them from doing so, then Bhagat Ram and three accomplices got infuriated and started abusing them stating that they belong to a lower class and passed casteist remarks, therefore, action be taken against them. After registration of the formal FIR, the investigation in the case got started.

Apprehending his arrest in this case, Bhagat Ram accused had approached the Court of Sessions seeking grant of pre-arrest bail but his such application was dismissed by the Court learned Additional Sessions Judge, SAS Nagar, Mohali vide order dated 18.9.2017. As such, he has approached this Court asking for similar relief.

Notice of the petition was issued to the respondents.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the petitioner has contended that in the FIR caste of the complainant has not been disclosed, therefore, the FIR could not have been lodged and then matter investigated. In support of his contention, he has referred to citation **Manohar M. Kulkarni Versus State of Maharashtra, 2006(1) R.C.R(Criminal) 536**. He has further contended that no such incident had been taken place and FIR has been got registered by WWICS to harass the petitioner, therefore, bar of

Section 18 of SC & ST Act does not apply. In support of his contention, he has referred to authority *Dr.R.K. Sangwan and another Versus State, 2009(14), R.C.R(Criminal) 109* by High Court of Delhi, wherein it was observed that bar created by Section 18 of the Act would not apply merely because an FIR has been registered under the Act and it would always remain within the domain and jurisdiction of the Court to judicially consider whether the allegations in the FIR prima facie make out an offence under the Act and if it is found so , only then it can be said that there is an accusation of having committed the offence under this Act. In this authority, reference has been made to the judgments passed by various other High Courts on this point, in the end holding that bar created by Section 18 of the Act is not absolute.

Learned counsel for the petitioner has further contended that from the allegations in the FIR, it cannot be said that the words attributed to the petitioner had been spoken publically, which is essential to constitute offence under Section 3 (X) of the Act.

Learned State counsel and learned counsel for the complainant have vehemently opposed the petition citing bar under Section 18 of the Act further contending that petitioner is not entitled to the pre-arrest bail and his custodial interrogation is required.

After hearing the rival contentions of the parties, I find that the petitioner has since joined the investigation. During the period he was granted interim bail, no recovery is to be effected from. Only during the trial, it can be found whether offence under Section 3(X) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,

1989 is made out or not.

Under the circumstances, the petition is accepted and the interim bail granted to the petitioner on 9.10.2017 is made absolute, subject to his fulfilling conditions under Section 438(2) Cr.P.C.

The petition stands allowed accordingly.

30.1.2018

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**(H.S. MADAAN)
JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No