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

**CRM-M-41940-2017
Date of Decision: 12.02.2018**

Rajbir

..... Petitioner

Versus

Sunita

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Vishal Malik, Advocate,
for the petitioner.

Ms. Sunita Nambiar, Advocate for
Mr. Abhimanyu Singh, Advocate,
for the respondent.

SUDIP AHLUWALIA J. (ORAL)

This is a petition for anticipatory bail as the petitioner along with two others has been summoned by the Ld. Judicial Magistrate First Class, Gurugram in Criminal Complaint Case No.47 of 2015 dated 13.04.2015 (Annexure P-1) for the offences under Sections 323, 506 and 34 of the Indian Penal Code (in short 'IPC') and Section 3(x)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'the Act').

[2]. Ld. Counsel for the respondent/complainant has challenged the maintainability of the present petition by contending that no prayer for anticipatory bail is entertainable by virtue of the statutory bar under Section 18 of the Act.

[3]. Heard; The legal position regarding the statutory bar is not disputable.

[4]. But it is also well-settled that if the FIR/complaint on the basis of which cognizance is taken *per se* does not disclose the ingredients of any offence under the aforesaid Act, then the statutory bar does not operate.

[5]. In the present case, it is seen that the allegation pertaining to the relevant offence under the Act is contained in Paragraph No.5 of the original complaint (Annexure P-1), and the relevant extracts therein are set out below:-

“....Then Jagbir said to complainant that “saali chamari aaj to tu bach gayi, aage tujhe kaun bachayega” (Chamari today you have been saved, but subsequently who would save you) and accused Rajiv said to complainant's husband that “saale chamar meri maar tu zindagi mein yaad rakhega” (Chamar, you would always remember my beatings in your whole life).”

[6]. It is thus seen that utterance of the derogatory casteist word is imputed only to Jagbir and accused Rajiv, in the said complaint and not to the present petitioner.

[7]. For this reason, this Court is of the opinion that the statutory bar under Section 18 of the Act would not be operative *qua* the present petitioner. His prayer for anticipatory bail is allowed and he is ordered to be released on such bail by the Ld. Trial Court/Duty Magistrate on appropriate terms and conditions.

[8]. Disposed off.

12.02.2018

Bhumika

**(SUDIP AHLUWALIA)
JUDGE**

1. Whether speaking/reasoned: Yes/No

2. Whether reportable: Yes/No