

Raj Rishi Mahajan and another

.....Petitioners

versus

Jatinder Kumar

.....Respondents

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr. Prateek Gupta, Advocate for the petitioners

Sudhir Mittal, J. (Oral)

The petitioners have been summoned for allegedly having committed an offence under Section 3(1)(X) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act'). The present petition has been filed under Section 438 read with Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') for grant of anticipatory bail.

Notice of motion.

Mr. Akhilesh Vyas, Advocate, accepts notice on behalf of the respondent.

Learned counsel for the petitioners submits that although Section 18 of the Act makes Section 438 Cr.P.C. inapplicable in such proceedings, Section 482 Cr.P.C. can be invoked because inherent powers of the High Court can not be curtailed. The evidence against the petitioners is in the nature of oral evidence and, thus, no recovery is to be effected from the petitioners. In this view of the matter, they are entitled to grant of anticipatory bail.

Learned counsel for the respondent submits that Section 18 of the Act bars the application of Section 438 Cr.P.C. and, therefore, jurisdiction under Section 482 Cr.P.C. can not be invoked. The petitioners, if so advised, may appear before the trial Court and seek regular bail.

It is settled law that inherent powers of the High Court can not be invoked to overcome a bar imposed either by the Code or by any other Statute. Inherent powers can only be invoked if no other provision of law is available to govern the situation having arisen in a particular case. In this view of the matter, I cannot accept the submissions of learned counsel for the petitioners.

However, I can not lose sight of the fact that the liberty of the citizen can not be curtailed unnecessarily. The petitioners are not criminals, who need to be kept behind the bars during the pendency of the trial. Thus, the petitioners would be at liberty to surrender before the trial Court on or before the date already fixed before it and seek regular bail. In case, they do so and file an application for regular bail, the trial Court would allow the same subject to its satisfaction.

The petition is disposed of accordingly.

November 14, 2018

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No