

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

CRM-M-44954-2019
Date of decision: 31.10.2019

Subham Duhan

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Sunil Saharan, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for grant of anticipatory bail to the petitioner in FIR No.229 dated 21.08.2019 registered under Sections 147, 148, 149, 294, 323, 341 and 506 of the Indian Penal Code, 1860, Sections 25 and 27 of Arms Act, 1959 and Section 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 at Police Station Sadar Hansi, District Hisar.

Learned counsel for the petitioner submits that petitioner is a student, aged about 17.5 years and as per the allegations in the FIR, registered at the instance of complainant Naseeb Singh, it is stated that complainant, along with some other persons, was going to Hisar in a Haryana Roadways bus and some mischievous children including petitioner Subham also boarded the bus and asked the driver to stop by saying that the bus, which is scheduled to come at 9.00 AM, has not come. On this, the

complainant and his brother entered into an altercation with the petitioner and others as to why they are delaying the bus and on that account, they had a scuffle with each other. It is further stated in the FIR that thereafter, the complainant party de-boarded the said bus and travelled in a private bus to Hansi but some children chased them on motorcycle and thereafter, they started fighting with complainant and others and abused them. Thereafter, the complainant called his uncle Phoolwant on phone and proceeded to police station for giving an application. When they reached near bus stand, again 15/20 boys, in which the petitioner is not named, came there and caused injuries to the complainant party.

Learned counsel for the petitioner further submits that 10 persons have already been arrested in the third incident when the injuries were caused to the complainant party. It is further submitted that in fact at the first instance, when the complainant alleges that the petitioner and others have stopped the bus for enquiring about delay in arrival of second bus, the complainant party initiated the forcible spat which resulted into scuffle between them.

Learned counsel for the petitioner further argues that there is no direct allegation of causing injury against the petitioner nor of commission of offence under the SC/ST Act.

Learned counsel for the petitioner has relied upon the judgment dated 01.10.2019 of Hon'ble Supreme Court, passed in ***Review Petition (Crl.) No. 228 of 2018 in Criminal Appeal No. 416 of 2018***, wherein the view taken in the judgment under review has been upheld that if no prima facie case is made out under the provisions of SC/ST Act, the High Court

can grant concession of anticipatory bail to the accused. The operative parts of the judgment are as under:

“1. The Union of India has filed the instant petition for review of the judgment and order dated 20.3.2018 passed by this Court in Criminal Appeal No.416 of 2018. This Court while dealing with the provisions of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short ‘the Act of 1989’) has issued guidelines in paragraph 83 of the judgment, which are extracted hereunder:

“83. Our conclusions are as follows:

i) Proceedings in the present case are clear abuse of process of court and are quashed.

ii) There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no *prima facie* case is made out or where on judicial scrutiny the complaint is found to be *prima facie mala fide*. We approve the view taken and approach of the Gujarat High Court in *Pankaj D Suthar* (supra) and *Dr. N.T. Desai* (supra) and clarify the judgments of this Court in *Balothia* (supra) and *Manju Devi* (supra);

iii) In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a nonpublic servant after approval by the S.S.P. which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.

iv) To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.

v) Any violation of direction (iii) and (iv) will be actionable by way of disciplinary action as well as contempt.

The above directions are prospective.”

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54. The guidelines in (iii) and (iv) appear to have been issued in view of the provisions contained in Section 18 of the Act of 1989; whereas adequate safeguards have been provided by a purposive interpretation by this Court in the

case of *State of M.P. v. R.K. Balothia*, (1995) 3 SCC 221. The consistent view of this Court that if *prima facie* case has not been made out attracting the provisions of SC/ST Act of 1989, in that case, the bar created under section 18 on the grant of anticipatory bail is not attracted. Thus, misuse of the provisions of the Act is intended to be taken care of by the decision above. In *Kartar Singh* (supra), a Constitution Bench of this Court has laid down that taking away the said right of anticipatory bail would not amount to a violation of Article 21 of the Constitution of India. Thus, *prima facie* it appears that in the case of misuse of provisions, adequate safeguards are provided in the decision mentioned above.

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67. We do not doubt that directions encroach upon the field reserved for the legislature and against the concept of protective discrimination in favour of downtrodden classes under Article 15(4) of the Constitution and also impermissible within the parameters laid down by this Court for exercise of powers under Article 142 of Constitution of India. **Resultantly, we are of the considered opinion that direction Nos.(iii) and (iv) issued by this Court deserve to be and are hereby recalled and consequently we hold that direction No. (v), also vanishes.** The review petitions are allowed to the extent mentioned above.

Learned State counsel, on instructions from ASI Dholu Ram, has not disputed the factual position and submitted that out of 10 accused persons, who were arrested, 07 accused have been granted concession of regular bail.

Without commenting anything on the merits of the case, considering the fact that the petitioner is a student, aged about 17.5 years; his name does not figure in the third incident in which the complainant party received injuries and also in view of the above judgment of Hon'ble Supreme Court, I deem it appropriate to grant concession of anticipatory bail to the petitioner.

Accordingly, the present petition is allowed and the petitioner

is granted concession of anticipatory bail subject to his furnishing bail/surety bonds to the satisfaction of the Investigating Officer and subject to the conditions envisaged under Section 438(2) Cr.P.C.

31.10.2019

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No