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

CRM-M-46355 of 2019

Date of decision: December 11, 2019

Sunil Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Sumit Sangwan, Advocate for the petitioner.

Mr. Arun Beniwal, DAG Haryana.

MAHABIR SINGH SINDHU, J

Present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') for grant of bail pending trial to the petitioner, in FIR No.278 dated 13.08.2019, under Sections 148, 149, 285, 323, 506 of the Indian Penal Code, 1860 (for short 'IPC'), Section 25 of the Arms Act, 1959 (for short 'Arms Act') and Section 3(2)(vi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC/ST Act') (challan presented under Ssections 285, 323, 325, 506 of IPC read with Section 34 of IPC, Section 25 of Arms Act, 1959 and Section 3 (2)(va) of SC/ST Act), registered at Police Station Bawani Khera, District Bhiwani.

As per prosecution case, petitioner along with others, caused injuries to the complainant.

Contends that the petitioner is in custody since 13.08.2019 and after investigation, in the matter, report under Section 173 of Cr. P.C. has already been submitted before the Court of competent jurisdiction. Also contends that the petitioner belongs to a different village than that of the complainant and thus, he is neither aware about his caste; nor used caste related words, therefore, the case is not falling within the ambit of Section 3(2)(va) of the SC/ST Act.

The submission of report under Section 173 of Cr. P.C. is duly acknowledged by the learned State counsel, on instructions from police official present in Court to assist him, and he is not able to controvert the factum of different village of the petitioner than that of the complainant, but opposed the prayer for bail.

Heard both sides and perused the paper-book.

Undisputedly, the petitioner belongs to a different village and there is no material shown to this Court either from the FIR or otherwise to substantiate that he used any caste related words against the complainant at the time of occurrence; thus, *prima-facie*, the provisions of Section 3(2)(va) of SC/ST Act are not attracted in this case. Since rest of the offences are not so serious, therefore, further incarceration of the petitioner would not serve any purpose. Also necessary to mention here that Hon'ble Supreme Court in the case of **Union of India versus State of Maharashtra and others**, (Review Petition (Crl.) No.228 of 2018, decided on 01.10.2019, in Para 59, *inter alia* observed as under:-

“To decide whether an accused is entitled to bail

under Section 438 in case no prima facie case is made out or under Section 439 is the function of the Court.”

In view of the above, this Court is left with no option except to grant concession of bail pending trial to the petitioner. Consequently, this petition is allowed; petitioner is ordered to be released on bail, in this case, on his furnishing adequate bail bonds and surety bonds to the satisfaction of learned trial Court/Duty Magistrate concerned.

The petitioner shall fully co-operate with learned trial Court without seeking any unnecessary adjournments.

The above observations may not be construed as an expression of opinion on the merits of the case.

(MAHABIR SINGH SINDHU)
JUDGE

December 11, 2019

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Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No