

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Reserved on: 11th October, 2019

Date of Decision: 22nd October, 2019

+

BAIL APPLN. 1828/2019

PRADEEP

..... Petitioner

Through: Mr. Mohit Mathur, Sr. Adv.
with Mr. Vikram Panwar, Mr.
Pardeep Dabas, Mr. Vikas
Walia and Mr. Suyash Sinha,
Advs.

versus

STATE

..... Respondent

Through: Mr. Amit Chadha, APP for
State with Shri Kulbir Singh,
ACP/Chhawla and ASI Satbir
Singh from Police Station-
Dwarka, Sector-28
Ms. Yashima Sharma, Adv. for
the complainant

+

BAIL APPLN. 1833/2019

DEEPAK GODARA & ANR.

..... Petitioners

Through: Mr. Mohit Mathur, Sr. Adv.
with Mr. Vikram Panwar, Mr.
Pardeep Dabas, Mr. Vikas
Walia and Mr. Suyash Sinha,
Advs.

versus

STATE

..... Respondent

Through: Mr. Amit Chadha, APP for
State with Shri Kulbir Singh,
ACP/Chhawla and ASI Satbir
Singh from Police Station-
Dwarka, Sector-28

Ms. Yashima Sharma, Adv. for
the complainant

+

BAIL APPLN. 1836/2019

HARENDER

..... Petitioner

Through: Mr. Mohit Mathur, Sr. Adv.
with Mr. Vikram Panwar, Mr.
Pardeep Dabas, Mr. Vikas
Walia and Mr. Suyash Sinha,
Advs.

versus

STATE

..... Respondent

Through: Mr. Amit Chadha, APP for
State with Shri Kulbir Singh,
ACP/Chhawla and ASI Satbir
Singh from Police Station-
Dwarka, Sector-28
Ms. Yashima Sharma, Adv. for
the complainant

CORAM:

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.

1. This order shall govern the disposal of the applications filed by the petitioners under Section 439 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") for the grant of regular bail in FIR No.43/2019 dated 23.1.2019, under Sections 323/325/452/427/354/201/341/34 of the Indian Penal Code, 1860 ("IPC") and Section 3(1)(x), (xi), (s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("the SC/ST Act"), registered at Police Station Sector-23, Dwarka, Delhi.

2. The State has filed the status report before this Court wherein it is stated that the present case was registered on the complaint of Ms.Kanta wife of Mr. Anil Kumar and Mr. Anil Kumar son of Late Shri Prahlad, both residents of H. No.759, near Community Centre, village Bharthal, Dwarka, New Delhi, under Section 156(3) of the Cr.P.C. on the directions of the Additional Sessions Judge, Dwarka Courts, in which they alleged that all the accused persons, namely, Ashok @ Shoki, Deepak, Sunil, Harender, Hardeep and Pradeep entered the house of complainants on 11.7.2018 at around 8:00 pm. Accused Ashok and Deepak caught Ms. Kanta by hair and dragged her and hit her head into the wall. Thereafter, all the accused persons started beating the complainant with hockey sticks, sword and fist blows. It is further alleged that accused Deepak, & Ashok broke the elbow of the complainant Smt. Kanta and accused Pradeep, Harender, Hardeep and Ashok had told the complainant that she belongs to a family of '*Chamar*' and further said to her that "*tu chamari hamare Jatto ke gharo mai kya kar rahi hai*". It is further alleged that thereafter, the accused persons broke all the windows and doors of the house of the complainant as well as the utensils kept therein. Accused persons also damaged the CCTV Cameras installed in the premises and took the DVR containing the CCTV footage with them. A supplementary charge-sheet has also been filed by the prosecution in the matter before the Trial Court on 7.8.2019.

3. Nominal roll of the petitioners has also been received.

4. I have heard the learned Senior Counsel for the petitioners as well as learned APP and the learned counsel for the complainant. I

have also gone through the police case file and the documents on record.

5. Learned Senior Counsel for the petitioners submitted that the petitioners are innocent and they have been falsely implicated in the present case. He further submitted that the alleged incident was stated to have taken place on 11.7.2018 when one of the complainants dialed at No.100. The version of the complainant was duly recorded by the PCR at that time and the PCR form itself proves that the petitioners did not utter any derogatory caste based remarks against the complainant. Even otherwise, a compromise was effected between the parties on 12.7.2018 which also vitiates the version of the complainant in the FIR. It is also submitted that the petitioners Harender, Deepak, Ashok and Pradeep have been in judicial custody since 27.3.2019, 31.5.2019, 10.7.2019 and 27.3.2019, respectively.

6. It is further submitted by the learned Senior Counsel for Petitioners that the present case is one where two families of a village have had strained relations for more than two decades over a piece of land and that the entire case is an afterthought and fabricated with a malafide intention to falsely implicate the petitioners. The allegations leveled are extremely bald in nature. It has been alleged that the accused persons entered the house of the complainant and broke all the doors, windows and utensils in the house. However, there are no photographs to substantiate the above said allegations of the complainant. Further, it has been falsely alleged by the complainant that the petitioners have taken away the DVR containing the CCTV footage.

7. Learned Senior Counsel for the petitioners also submitted that a bare reading of the complaint made on 11.7.2018 and later, an application filed under Section 156(3) of the Cr.P.C. as well as statement of the complainant under Section 164 of the Cr.P.C. and in the FIR, demonstrates that the allegations leveled by the complainant against the petitioners are after-thought and for that reason, she improved the same from time to time to implicate the petitioners in the serious and heinous crimes.

8. On the other hand, learned APP for the State opposed the bail applications of the petitioners and submitted that the petitioners have committed serious and grave offences and they are likely to harm and threaten the complainant and her family.

9. In ***Dinesh @ Buddha v. State of Rajasthan*** (2006) 3 SCC 771, it has been held by the Supreme Court that *sine qua non* for application of Section 3 (2)(v) of the SC/ST Act is that the offence must have been committed against the persons on the ground that such person is a member of Scheduled Castes and Scheduled Tribes.

10. In a recent judgement, titled as ***Khuman Singh v. State of Madhya Pradesh***, 2019 SCC Online SC 1104, the Supreme Court while reiterating the law laid down in ***Dinesh @ Buddha v. State of Rajasthan*** (*supra*) held as under:

“15. As held by the Supreme Court, the offence must be such so as to attract the offence under Section 3(2)(v) of the Act. The offence must have been committed against the person on the ground that such person is a member of Scheduled Caste and Scheduled Tribe. In the present case, the fact that the

deceased was belonging to “Khangar”-Scheduled Caste is not disputed. There is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore, the conviction of the appellant-accused under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not sustainable.”

11. It is held in the case of ***Mukesh Kumar Saini and Ors v. State (Delhi Administration)***, 94 (2001) DLT 241 that Section 34 of the IPC cannot be pressed into service in offence under Section 3(1)(x) of the SC/ST Act.

12. In the case of ***Daya Bhatnagar v. State***, 2004 (109) DLT 915, it has been held that the public view in Section 3(1)(x) of the SC/ST Act has to be interpreted to mean that the public persons present (howsoever small number it may be), should be independent, impartial and not interested in any of the parties. In other words, persons having any kind of close relationship or association with the complainant, would necessarily get excluded.

13. In the matter of ***State of Rajasthan v. Balchand***, (1977) 4 SCC 308, the Supreme Court held as under:

“2. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative.

3. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also the heinousness of the crime. Even so, the record of the petitioner in this case is that the petitioners are not having any criminal antecedents, there is nothing to suggest that he has abused the trust placed in him by the court; his social circumstances also are not so unfavourable in the sense of his being a desperate character or unsocial element who is likely to betray the confidence that the court may place in him to turn up to take justice at the hands of the court. He is stated to be a young man of 27 years with a family to maintain. The circumstances and the social milieu do not militate against the petitioner being granted bail at this stage. At the same time any possibility of the absconsion or evasion or other abuse can be taken care of by a direction that the petitioner will report himself before the police station at Baren once every fortnight.”

14. In *Siddharam Satlingappa Mhetre v. State of Maharashtra* (2011) 1 SCC 694, the Supreme Court observed that just as liberty is precious to an individual, so is the society's interest in maintenance of peace, law and order. Both are equally important. The Supreme Court further observed that personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case.

15. Now, reverting back to the case at hand, it can be seen from the record that in the initial complaint made on No.100, the complainant was not found to have made any allegations against the petitioners uttering derogatory caste based remarks against her. Even, in the

statement under Section 164 of the Cr.P.C., the names of Pradeep and Harender, stated to have not been mentioned.

16. It is admitted, on instructions, by the learned APP, on the query of the Court that when the complainant dialed No.100 on 11.07.2018, her version was recorded and at that time, the said complainant did not report that the petitioners uttered any derogatory caste based remarks against her. Again, on the query of the Court, it is admitted by the learned APP, on instructions, that the entry in the *roznamcha* on 12.7.2018 demonstrates that a compromise was effected between the parties and it also did not mention about any casteist remarks. Even, the MLC of the complainant Kanta on 12.7.2018 at 12:25 am only demonstrates that the cause of injury is alleged history of physical assault.

17. Without commenting on the merits of the case, *prima-facie*, this Court is also of the view that when the complainant dialed at No.100, there were no allegations made against the petitioners that they uttered derogatory caste based remarks against the complainant. Accordingly, at the initial stage, no allegations regarding uttering derogatory remarks were made out against the petitioners by the complainant or by the investigating agency. The petitioners, namely, Harender, Deepak, Ashok and Pradeep have been in judicial custody since 27.3.2019, 31.5.2019, 10.7.2019 and 27.3.2019, respectively, and even the arguments on charge have not yet been heard by the Trial Court and admittedly, nothing is required to be recovered from the petitioners, at this stage.

18. The aforesaid documents, admissions and discussions itself

reveal about the contradictions and the improvements made later on by the complainants which not only go to the root of the matter but also are required to be taken into consideration, at this stage, while considering the sanctity of the other allegations made against the petitioners, at least, for the purposes of considering the question of grant of bail to them.

19. It is also held in the matter of *State of Rajasthan v. Balchand* (supra) that any possibility of the absconsion or evasion or other abuse can be taken care of by passing appropriate directions and also by imposing certain conditions in this regard.

20. Hence, taking into consideration the aforesaid discussions as well as the age of the petitioners, their socio-economic background, nature and gravity of the offence, severity of the punishment in the event of conviction, and likelihood of the offence being repeated and the other apprehensions which can be taken care of, in view of the judgment in *State of Rajasthan v. Balchand* (supra), this Court is of the opinion that bail applications of the petitioners deserve to be allowed. Ordered accordingly. Petitioners are admitted to bail and they shall be released, if not required in any other case, on their furnishing bail bonds in the sum of Rs.25,000/- each with one surety each of the like amount, to the satisfaction of the Trial Court.

21. The aforesaid order of bail shall remain operative subject to the compliance of the following conditions by the petitioners:

- i. The petitioners shall comply with all the terms and conditions of the bond executed by them.
- ii. The petitioners shall co-operate in the trial.

- iii. The petitioners shall not indulge themselves in extending inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the Court or to the Police Officer, as the case may be;
 - iv. The petitioners shall not commit an offence similar to the offence of which they are accused.
 - v. The petitioners shall not seek unnecessary adjournments during the trial.
 - vi. The petitioners shall not leave India without previous permission of the Trial Court.
 - vii. The petitioners shall furnish to the IO their respective current addresses and mobile numbers on which they can be contacted, within one week after their release on bail and if there is any change either in the addresses or mobile numbers in future, they shall promptly inform the IO as well as the Trial Court.
 - viii. The petitioners shall report themselves before the police station once in every fortnight.
22. It is made clear that nothing stated or observed hereinabove shall tantamount to any expression on the merits of the case.
23. The bail applications are disposed of accordingly.

CHANDER SHEKHAR, J

OCTOBER 22, 2019/rk