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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-5724-2020
Date of Decision: 11.02.2020

Sandeep and others

..... Petitioners

Versus

State of Haryana

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. R.S. Hooda, Advocate,
for the petitioners.

SUDIP AHLUWALIA, J. (ORAL)

[1]. In answer to the Court's query regarding maintainability of the present petition, Ld. Counsel for the petitioners relies upon Para No.10 of the judgment of the Hon'ble Apex Court passed in **Writ Petition (C) No.1015 of 2018** titled as “**Pradhvi Raj Chauhan Vs. Union of India and others**”, which was pronounced only yesterday, in which it has been noted:-

“10. Concerning the applicability of provisions of section 438 Cr.PC, it shall not apply to the cases under Act of 1989. However, if the complaint does not made out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A (i) shall not apply. We have clarified this aspect while deciding the revision petitions.”

[2] There can be no dispute about the position of law expounded above. The crucial question, however, is to determine whether or not, the

complaint/FIR in the present case makes out a *prima facie* case for applicability of the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'SC & ST Act'). Contention of the Ld. Counsel for the petitioners in this regard is that the casteist remarks allegedly made towards children of the complainant, were attributable only to co-accused Satish, Raju and Kalu, and not to the present petitioners, namely, Sandeep, Sunil and Lokesh.

[3]. This Court is, however, not in agreement with the aforesaid submission. A close reading of the FIR in its vernacular version clearly reveals that the role imputed to co-accused Satish, Raju, Sonu and Kalu was of throwing live Sutli Bombs on the children of the complainant. But there is no specification as to which of the accused persons used the casteist remarks [whereas according to the FIR, it was the 'accused persons' (दोषियानों)], who had done so. After two sentences, it has also been specifically mentioned that some time later, 'all the' accused persons with common intention had come armed with blunt weapons and attacked the complainant. In such circumstances, at this stage, it cannot be held that involvement of the petitioners in the occurrence is limitable strictly to the acts of violence and not to the casteist remarks made by 'the accused persons', in a situation when only throwing of Sutli Bombs was specifically attributed to the co-accused.

[4]. For the aforesaid reasons, this Court is not convinced with the submission that no *prima facie* case showing existence of the ingredients of the provisions of S.C. & S.T. Act against the present petitioners is, at this stage, made out.

[5]. The prayer for anticipatory bail would certainly appear to be barred by Section 18 of the SC and ST Act.

[6]. Dismissed.

11.02.2020

Bhumika

**(SUDIP AHLUWALIA)
JUDGE**

1. Whether speaking/reasoned: Yes/No

2. Whether reportable: Yes/No