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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-18902-2020 (O&M)  
Date of decision: 19.8.2020

**Nasir Mohammed**

**.....Petitioner.**

**vs.**

**State of Haryana and another**

**.....Respondents.**

**CORAM: - HON'BLE MR. JUSTICE SANJAY KUMAR**

Present: - Mr. Sandeep Singh Jattan, Advocate, for the petitioner.

Mr. Rajneesh Chadwal, Assistant Advocate General,  
Haryana.

Mr. Namit Khurana, Advocate,  
for complainant-respondent No.2.

.....

**Sanjay Kumar, J. (ORAL)**

**CRM-20069-2020**

Application is ordered. Documents are taken on record.

**CRM-M-18902-2020**

The petitioner is the accused in FIR No. 102 dated 29.6.2020 on the file of Police Station Radaur, District Yamuna Nagar, registered under Sections 354-A IPC and Section 3(1)(w)(i) and (ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, *the Act of 1989*). By way of this petition, he seeks grant of anticipatory bail.

In the light of Sections 18 and 18-A of *the Act of 1989*, an application for anticipatory bail, under Section 438 Cr. P.C., would not be maintainable if a *prima facie* case is made out of an offence having been committed by the accused who seeks such relief. (See:

*Prathviraj Chauhan vs. Union of India, 2020 SCC Online SC 159*).

It would therefore be necessary for this Court to examine whether such a *prima facie* case is made out against the petitioner as per the allegations levelled against him by the complainant. The recitals in the FIR are to the effect that the petitioner caught the hand of the complainant with a bad intention and asked her to walk with him. He then abused her in the name of her caste. However, in the course of her statement, recorded under Section 164 Cr.P.C., the complainant went further and gave more details of the attack upon her. She stated that the petitioner caught her by the neck and tried to kiss her and when she shouted, he threatened her and abused her by caste.

Mr. Sandeep Singh Jattan, learned counsel, would contend that these improvements on the part of the complainant clearly showed that she was not credible and that the petitioner should be given the benefit of doubt. He would also rely on affidavits furnished by neighbours in support of the petitioner, stating to the effect that no altercation took place on the fateful day as alleged by the complainant.

However, Section 3(1)(w)(i) of *the Act of 1989* only requires a person, not being a member of the scheduled castes and scheduled tribes, to intentionally touch a scheduled caste/tribe woman knowing that she belongs to such caste/tribe. Such act of touching must be of a sexual nature and must not be with the recipient's consent. Even use of words, acts or gestures towards a scheduled caste/tribe woman knowing that she belongs to such caste/tribe is sufficient for the purpose of sub-clause (ii) of Section

Given the wide latitude of the language used in the legal provisions, this Court is of the opinion that the initial allegation made by the complainant, which led to registration of the FIR, is sufficient in itself to constitute a *prima facie* case against the petitioner.

That being so, the petitioner would not be entitled to seek relief under Section 438 Cr. P.C., as the same stands excluded by virtue of the provisions of Sections 18 and 18-A of *the Act of 1989*.

The petition is accordingly dismissed on the ground of maintainability.

(SANJAY KUMAR)  
JUDGE

19.8.2020

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| preeti                            |        |
| whether speaking/non speaking     | yes/no |
| whether reportable/non reportable | yes/no |