

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CrI. Misc. No. M-23120 of 2020
Date of Decision: August 21, 2020

Varun Kumar

.....Petitioner

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. G.P.S. Ghuman, Advocate
for the petitioner

Mr. P.S. Walia, AAG Punjab

Sudhir Mittal, J. (Oral)

The present petition has been filed for grant of anticipatory bail to the petitioner in case FIR No. 0106 dated 04.07.2020, registered under Sections 166-A, 295-A, 323, 342 IPC, Section 3(1)(iv), 3(1)(v), 4 of the SC & ST (Prevention of Atrocities) Act, 1989, Section 67 of Punjab Police Act, 2007, Section 66(E) and Section 67(A) of Information Technology Act, 2000 at Police Station City Khanna.

The aforementioned FIR came to be registered on account of an investigation conducted by a Special Investigation Team (SIT) constituted on account of orders passed by this Court in CRWP No. 3160 of 2020. The complainant had filed the said writ petition for directions to the Punjab Police to register an FIR against the erring police officials who had illegally confined the petitioner therein, his son and his worker and had humiliated and tortured them. An SIT headed by an Additional Director General of Police was constituted which submitted a report reproduced verbatim in the FIR. It indicted certain police personnel including the petitioner, leading to registration of the FIR.

Learned counsel for the petitioner submits that a perusal of the report of the SIT reproduced in the FIR shows that primarily, there was dispute between the complainant and respondent No. 5 in the criminal writ petition namely Rajvir Singh @ Rubal. The petitioner was not a party-respondent in the said writ petition nor was there any prayer for registration of an FIR against him. Thus, the petitioner has been wrongly named as an accused. Further, according to the SIT report, a video was recorded on the phone of the petitioner and uploaded on the internet. The petitioner is not alleged to have recorded the video. Assuming that the petitioner recorded the video himself and uploaded the same, he would be guilty of offence under Section 66(E) of the Information Technology Act, 2000 which is bailable. Offence under Section 67(A) of the said Act is not made out. There is no allegation of the petitioner having hurt the religious feelings of the alleged detainees and, accordingly, Section 295-A IPC is also not attracted. Similar is the situation regarding offences under the SC/ST Act. Only offences under Section 295-A IPC and SC/ST Act are non-bailable. The petitioner has an excellent record. There is no other criminal case pending against him and, thus, he may be granted anticipatory bail.

A perusal of the report of the Special Investigation Team reproduced in the FIR reveals that the petitioner has been specifically named therein. His presence at the time of the incident *prima facie* discloses that he participated in the illegal acts committed by the police in the room of the Station House Officer namely Inspector Baljinder Singh. Thus, he can not avoid his criminal liability by submitting that specific allegations regarding hurting religious feelings of the complainant have not been levelled against him. Once it is evident that the petitioner was also present at the time of the incident, he automatically becomes a participant in the crimes committed at the spot. Violation of natural rights of citizens by the police is a very serious matter. Anticipatory bail application filed

by the main accused namely Inspector Baljinder Singh has already been dismissed vide order dated 11.08.2020 passed in CRM-M-22391-2020. The petitioner can not be granted the discretionary relief of anticipatory bail by arguing that his actions can be segregated from those of the other police personnel present at the time.

The petition has no merit and is, consequently, dismissed.

August 21, 2020

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No