

Sr. No. 210

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

**CRM-M-27020 of 2020 (O&M)
DATE OF DECISION : 08.10.2020**

Om Parkash & Anr.

...Petitioners

Versus

State of Haryana & Anr.

...Respondents

And

CRM-M-27328 of 2020 (O&M)

Darshna Devi

...Petitioner

Versus

State of Haryana & Anr.

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Keshav Partap Singh, Advocate,
for the petitioners Om Parkash & Luxmi.

Mr. Sumit Sangwan, Advocate
For petitioner Darshna Devi.

Mr. Bhupender Singh, DAG Haryana.

Mr. Mehmood Pracha, Advocate
For the complainant.
(Presence marked through video conference)

ARUN MONGA, J. (ORAL)

1. Petitioners in both the above-referred two petitions seek regular bail in FIR No. 122 dated 22.06.2020, registered under Sections 147, 149, 201, 323, 380, 427, 452 and 506 IPC and Section 3(2) of Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act, 1989, at Police Station

Jhajhu Kalan, District Charkhi Dadri. Both petitions are being disposed of by this common order passed in CRM-M-27020 of 2020.

2. Per FIR, the complainant and her family is having a dispute with the accused over a plot measuring half kanal. Said plot was purchased by her father in law from Prithvi Singh (brother of accused/petitioners Om Parkash and Darshna Devi) in the year 1990. Dispute between the parties over the said plot led to filing of a complaint dated 21.05.2020 before the police, wherein complainant alleged that Kallu, Pinku and Om Parkash had given abuses to her in the name of her caste. Allegedly, on 08.06.2020, Kallu tried to run over a car over the complainant and her husband. Another complaint to the police was thus given on 18.06.2020, inter alia, complaining about bad remarks addressed to complainant in the name of her caste. No action was taken by the police on either of her aforesaid complaints.

3. It is further complained in the FIR that, on 21.06.2020, accused Om Parkash accompanied with his other co-accused viz his wife, one Pinku, Kallu, their three relatives, two others from village Salhawas and one from Hansha came to her house and started hurling abuses in the name of her caste. They also gave beatings to complainant and damaged a car and broke wall of their house and also took away CCTV records. Complainant was later shifted to the hospital for treatment and her statement was recorded by the police. Basis thereof, FIR in question was registered.

4. Learned counsel for petitioners Om Parkash and his wife Luxmi argues that both the petitioners are about 70 years of age and no specific role has been attributed to them. According to him, the parties are admittedly having strained relations due to civil dispute over a plot. When the

petitioners got issued legal notice dated 04.06.2020 to the father-in-law of the complainant to vacate the house constructed over the plot in question, as a counter-blast, instant FIR has been got registered against the petitioners and other family members. According to him, it will be a moot question at the trial, whether the provisions of SC&ST Act are attracted or not as the essential ingredients to attract the rigors of Section 3 of the SCT & ST Act are conspicuously missing from the contents of the FIR. He further submits that the petitioners are in custody since 24.08.2020 and their custodial interrogation is no more required. No useful purpose would be served by keeping them behind the bars especially in the pandemic scenario, where they are more prone to get infected being of old age and lesser immunity. They are not involved in any other case.

5. Learned counsel for petitioner Darshna submits that she has been implicated in the case only because she is the sister of accused Om Parkash. He further submits that admittedly petitioner is residing in a different village and her presence at the place of occurrence is doubtful, which will be ascertained only during the trial. Due to Covid-19 pandemic, there is no likelihood of commencement of trial any time soon. Courts are since currently working with restrictions and taking up only urgent matters. According to learned counsel, the petitioner is about 65 years old lady and is in custody 26.08.2020. She is not involved in any other case.

6. On the other hand, learned counsel for the complainant, after taking leave of the Court, strenuously argues that taking into account the gravity of offence, the petitioners are not entitled to bail. According to him, the petitioners are accused of having harassed, maltreated and beaten up the complainant, who is from Scheduled Castes community. According to him,

the accused not only committed the offences, as enumerated in the FIR, but it is a clear-cut case of extortion as they want to grab the property of the complainant and in this view of the matter, more serious offences are expected to be added in the FIR during the course of investigation, which is underway.

7. On a query of Court, learned State counsel submits that during investigation it has transpired that the petitioners had caused simple injuries to the complainant after trespassing into her house. He further informs that qua the said allegations, the investigation is complete as the challan has though been prepared, but the same could not be filed due to pandemic.

8. Without commenting opining on the arguments/ counter arguments noted hereinabove, the same since relate to the merits of the case and shall be finally adjudicated at the stage of trial, I am of the view that, given the age of the petitioners husband and wife -Om Parkash and Luxmi, both 70 years of age and petitioner Darshna, aged 65 years, sister of co accused Om Parkash, coupled with the fact that their interrogation is already complete since they have been remanded to judicial custody, they are entitled to be released on bail. Particularly, when they are more susceptible to get infection caused by Covid-19 pandemic. Probability of infection is higher their age bracket due to lower immunity at that age. Furthermore, their prevention custody is no more required since investigation qua them is already over in view of challan having already been prepared.

9. As regards the argument of learned counsel for complainant that investigation is still under progress and possibility of invocation of more stringent offences to the FIR at a later stage cannot be ruled out, I am of the view that if the petitioners/ accused are found to be involved in more

stringent offences, the prosecution shall be at liberty to seek cancellation of bail granted to the petitioners by filing appropriate applications.

10. As already noted, since as per stand of the State, the investigation qua petitioners is complete, I am of the view that no useful purpose would be served by keeping them in further preventive custody. The trial is not likely to commence any time soon due to pandemic and the allegations against the petitioners are to be adjudged only after the trial. The petitioners are stated to be not involved in any other case.

11. Considering the overall scenario, both the petitions are allowed. Petitioners Om Parkash, Luxmi and Darshna shall be released on bail on their furnishing bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/ Duty Magistrate, as the case may be.

12. It is however, made clear that petitioners shall not directly or indirectly try to contact the complainant or any other witness related to the case. All the petitioners shall make themselves available as and when called by the investigating Officer for any further investigation/ recording of statement and will cooperate in further investigation, if any, undertaken subsequently. Petitioner Darshna Devi shall not go to the village of the complainant as she is stated to staying in another village. In case the petitioners are found involved in any other case of similar nature while on bail, the prosecution shall be at liberty to seek cancellation of their bail.

13. Pending applications, if any, stand disposed of.

October 08, 2020
Jiten

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No