

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-30697 of 2020 (O&M)

Date of decision : 28.10.2020

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Vikas @ Abhishek

.....Petitioner

vs.

State of Haryana and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. S.S. Jattan Advocate
for the petitioner.

Mr. Tanuj Sharma, Assistant Advocate General,
Haryana.

Mr. Parveen Bhardwaj, Advocate for the complainant.

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H. S. Madaan, J.

Case taken up through video conferencing.

This petition under Section 438 Cr.P.C. for grant of pre-arrest bail has been filed by petitioner – Vikas @ Abhishek, aged about 18 years, son of Jasmer Singh, resident of village Jadola, Kaithal, District kaithal, an accused in FIR No. 152 dated 3.8.2020, for offences under Sections 148, 149, 323, 341, 307 IPC and Section 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act, 1989, registered at Police Station Dhand, District Kaithal.

Briefly stated, facts of the case, as per the prosecution story are that, the criminal machinery in this case was set into motion by complainant Vikram Singh s/o Pala Ram, resident of village Jadola,

District Kaithal, belonging to Scheduled Caste community , who in the written complaint submitted by him at Police Station Dhand, District Kaithal, stated that on 2.8.2020, in the morning, he alongwith his brother Vikas, had gone to Pehwa Road, Jadola, for bringing fodder for their animals in their cycle rickshaw. They had placed the fodder on the cycle rickshaw, which was being plied by Vikas, whereas the complainant was walking behind. When they had reached near the house of Pala Ram son of Jai Singh, and time was about 12.00 noon, then 5-6 boys having dandas/bindas in their hands were found standing on the road near bridge. They intercepted the cycle rickshaw with the help of a motorcycle without registration number. In the meanwhile, Ankit son of Sumer Pal, resident of Jadola, armed with a wooden stick came and hit Vikas therewith on his head. The other boys standing, abused them in the name of their caste, threatening to kill them on that day. They had hit Vikas with wooden sticks on skull, left arm, right arm. One of the boys had caught hold of Vikas from his back. After receiving injuries Vikas fell down, whereas complainant ran away to save his life. When the assailants had left the spot, then complainant arranged a vehicle and removed Vikas to the Government Hospital at Kaithal, where he was given first-aid and referred to Hospital at Chandigarh. The condition of Vikas became critical on account of injuries suffered by him. Formal FIR was registered. Investigation in the case started.

Apprehending his arrest in this case, the petitioner had approached Special Court. Kaithal, for grant of pre-arrest bail.

However, his such application was dismissed vide order dated 24.9.2020. Feeling dissatisfied, the petitioner has knocked at the door of this Court craving for grant of anticipatory bail, which request is being opposed by the State counsel, as well as by the counsel for the complainant.

I have heard, learned counsel for the petitioner, learned State counsel assisted by counsel for the complainant, besides going through the record.

At the very outset, it may be stated that the petitioner -accused is praying for grant of pre-arrest bail in the case which besides other offences has been registered for offence under Section 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act, 1989 (hereinafter to be referred to as 'the SCST Act'). Section 18 of the said Act specifically provides that Section 438 of Cr.P.C. with regard to grant of pre-arrest bail is not to be applied to persons committing an offence under the SCST Act. Therefore, the present petition is certainly not maintainable, though learned counsel for the petitioner has tried to come up with an argument that from the allegations in the FIR no offence under Section 3(2) (v) of the SCST Act, is made out. But I am not convinced by his such argument. A very perusal of the FIR goes to show that it has been specifically alleged that the assailants have used abusive language on caste of the complainant, which is scheduled caste. Thus, offence under Section 3 (2) (v) of SCST Act, appears to have been committed by the petitioner and other

assailants. Therefore, the petition for pre-arrest bail is barred and deserved to be rejected for that very reason.

Even otherwise, on merits also, the petitioner does not have any case. The name of the petitioner had been nominated as one of the assailants during investigation of the case and he cannot take advantage of the fact that he is not named in the FIR. The limited purpose of recording the FIR is that it sets the criminal machinery into motion and it is not an encyclopedia of an incident. It is only during the investigation, after recording of FIR, the story gets unfolded, as to how the incident was planned, executed and part played by each of the accused. The custodial interrogation of the petitioner is required for complete and effective investigation and to recover the weapon used in the incident. In case the custodial interrogation is denied to the Investigating Agency, that shall leave many loopholes and gaps, adversely affecting the investigation, which is uncalled for.

Thus finding no merit in the petition, the same stands dismissed.

However, nothing discussed above shall have any bearing on the merits of the case.

28.10.2020

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(H.S. Madaan)
Judge

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No