

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

CRM-M-34791 of 2020

Date of Decision: 30.10.2020

Kanishek

Petitioner

Versus

State of Haryana

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Deepak Choudhary, Advocate for the petitioner.
Mr. Pankaj Mulwani, DAG, Haryana.

AVNEESH JHINGAN, J (Oral):

The matter is taken up for hearing through video conference due to COVID-19 situation.

The petition is for anticipatory bail in FIR No. 408 dated 23.8.2020, under Sections 323/341/506 IPC and Section 3 of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Act') registered at Police Station City, Fatehabad.

The FIR is at the instance of Dr. Nasib Kumar employed as Assistant Professor at Government College for Women, Bhodia Khera, Fatehabad. It is alleged that on 22.8.2020 at about 6.50 PM, he was returning after performing the duty designated to him of Duty Magistrate (Corona). At the main gate of the college, the petitioner, in a drunken state came in front of the vehicle of the complainant on blowing horn, he did not move, rather he alighted from the vehicle and started abusing the complainant in the name of his caste and got hold of his neck. The FIR was registered on the next date. A CCTV footage was presented which was

Learned counsel for the petitioner submits that the petitioner has been falsely implicated and it was a mere road side incident which has been given a different colour. He further submits that *prima facie* no case is made out under Section 3 of the Act. He relies upon the decision of the Supreme Court in **Union of India v. State of Maharashtra and others**, AIR 2019 SC 4917.

Learned counsel for the State opposes the relief sought. The contention raised is that there is a video footage of the incident. He further relies upon Section 18 of the Act to submit that anticipatory bail cannot be granted.

There is no allegation in the FIR that some one else had witnessed the incident. Moreover if the allegations are taken at its face value, the petitioner is alleged to be in drunken state at the time of incident, hence it cannot be attributed that he intentionally with knowledge of caste of the complainant had uttered the caste based words. The Supreme Court in **Union of India v. State of Maharashtra and others** (supra) has held that in case *prima facie* case is not made out for attracting the provisions of the Act, the bar under Section 18 of the Act will not apply for grant of anticipatory bail.

Considering the facts, the petition is allowed subject to petitioner's joining the investigation within two weeks. He shall be bound by the conditions under Section 438(2) Cr.P.C.

[AVNEESH JHINGAN]
JUDGE

30th October, 2020

<i>mk</i>	1. Whether speaking/ reasoned	:	Yes
	2. Whether reportable	:	Yes