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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **BAIL APPLN. 1247/2020**

ANIL GIRI @ MAHENDER GIRI Petitioner

Represented by: Mr.Abhay Singh, Advocate with
Ms.Ojaswini Malik, Advocate

versus

THE STATE Respondent

Represented by: Ms.Manjeet Arya, APP for State with
ACP Mr.Mayank Bansal,Sub-
Division Vivek Vihar
(through video conferencing)

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER
07.07.2020

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1. The hearing has been conducted through Video Conferencing.
2. By this petition, the petitioner seeks bail in case FIR No. 49/2020 under Sections 304A IPC & 7/9 of Prohibition of Employment As Manual Scavenger & Their Rehabilitation Act, 2013 (in short, the 'PEMSR Act') wherein Section 3(1)(j) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was added later on.
3. Learned counsel for the petitioner contends that after the above-noted FIR was registered, the petitioner was arrested and granted bail for the offences punishable under Section 304A IPC and Sections 7/9 of PEMSAR Act. However, subsequently, because the certificate of the deceased and the other victim showed that they belonged to the Scheduled Caste, provision under Section 3(1)(j) of the SC & ST Act was invoked and the petitioner

was arrested.

4. Learned counsel for the petitioner submits that firstly, the petitioner had no role in asking the two labourers to go into the manhole. The decision to send them to the manhole, if any, was of the Contractor Anil Garg or his Supervisor Shanky. In any case, there is no evidence on record to suggest that because the deceased and the other victim belonged to the Scheduled Caste, they were made to perform the work of going into the manhole by the petitioner. In any case the plaintiff had no knowledge of the victims belonging to Scheduled Caste. Consequently, offence under Section 3(1)(j) of the SC & ST Act is not made out.

5. The above-noted FIR was registered after a PCR call was received regarding an incident in the sewer near the BSES office, CBD Ground, Shahdara, Delhi. When the police visited the spot, they found two persons stranded in the manhole of the sewer. The fire services were summoned and the two persons namely Ravi and Sanjay were rescued. Ravi was declared brought dead whereas Sanjay was given treatment. Statement of the fellow labourer Monu was recorded who stated that he along with his fellow labourers Deepak, Ravi and Sanjay were told to clean the sewer by Anil Giri and Shanky despite they having informed them that it will be hazardous to enter into the manhole but they insisted them to enter into it and clean it. Subsequently, statements of Deepak and then Sanjay were also recorded who corroborated the version of Monu.

6. The petitioner is working as a Beldar with DDA and his actual name is Mahender Giri. He was arrested in this case on 21st February, 2020 after it was revealed that he had gone to the spot to supervise the work at the instance of his senior officer. Statement of Ajay Shrotriya, AE/Incharge of

CBD Shahdara was also recorded who stated that there was a blockage in the Nala near the Fire Station CBD Ground to BSES office which was creating problem and thus, Contractor Anil Garg was asked to do that work as his work was already in progress for the cleaning of the Nala.

7. From the facts as noted above, it is evident that the act of the Contractor and his Supervisor i.e. Anil Garg and Shanky asking the two labourers to go into the manhole to see that the overflowing of Nala without safety gears, amounts to offences committed, as alleged, however, as regards the petitioner is concerned, it is the case of the prosecution that though it was only the cleaning of the Nala, at the spot, the decision was taken that the manhole and the Nala need to be connected so that the water over flowing into the Nala could go to the manhole and that is why two persons were asked to go inside the manhole.

8. At this stage, though this Court finds that offences under Section 304A IPC and Sections 7/9 of PEMSR Act appeared to have been prima facie committed by the petitioner, however, the issue is whether offence under Section 3(1)(j) of the SC & ST Act is attracted or not against the petitioner, for the reason, it has not come in the statement of any of the witnesses that the petitioner was the one who had asked the two persons to do this particular work and particularly because of the fact that they belonged to the said community or that the petitioner had knowledge of their caste. The petitioner being the Beldar of the DDA and outside the working system of Anil Garg, the Contractor, some material is required on record to show that the petitioner had the knowledge of caste of two persons. At this stage, this Court finds that prima facie there is no material to show that the petitioner possessed the knowledge of the caste of the two persons and

therefore instructed them to clean the Nala and the manhole, hence, this Court deems it fit to grant bail to the petitioner.

9. It is therefore directed that the petitioner be released on bail on his furnishing a personal bond in the sum of ₹25,000/- with one surety bond of the like amount subject to the satisfaction of the learned Trial Court/CMM/Duty Magistrate.

10. It is however clarified that any observation made hereinabove be not read as an expression of opinion on the merit of the case.

11. Petition is disposed of.

12. Order be uploaded on the website of this Court.

MUKTA GUPTA, J.

JULY 07, 2020

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