

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-3015-2021

Date of decision: 02.08.2021

Om Parkash Yadav

...Petitioner(s)

Versus

State of Haryana and another

...Respondent(s)

CORAM: - HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Neeru Bansal, Advocate, for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana.

Mr. Arjun Sheoran, Advocate with
Ms. Aditi Sheoran, Advocate, for the complainant.

JASGURPREET SINGH PURI, J.(ORAL)

The present petition has been filed under Section 438 read with Section 482 of Code of Criminal Procedure for seeking concession of anticipatory bail in FIR No.655 dated 14.10.2020, under Sections 153-A and 154-B of Indian Penal Code, 1860 and Section 3(1) (r) and 3(1) (s) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amendment 2015), registered at Police Station Hansi City, District Hansi.

Learned counsel for the petitioner has submitted that it is a case where the petitioner has been falsely implicated because the aforesaid offences are not made out in the present case in view of the fact that the ingredients of these provisions are not fulfilled. She submitted that it was not a case where the petitioner has uttered something in public view. She

further submitted that it is also not ascertained as to whether the petitioner had put up the contents of the video on social media and, therefore, he may be considered for the grant of anticipatory bail. She has further pointed out that with regard to the same video which is alleged to be uploaded in the youtube was also subject matter of an another FIR which was registered at Panvel, District Raigarh (Maharashtra) under the same offences and the petitioner was arrested in that case and he has been granted regular bail by the learned Additional Sessions Judge on 03.04.2021. In a nutshell the learned counsel for the petitioner has raised three arguments. Firstly, that based on the set of same allegations regarding the same video, an FIR was registered in Maharashtra and the petitioner was granted regular bail and, therefore, the petitioner should be granted anticipatory bail in the present FIR. Secondly, the ingredients of Section 3(1)(r) and 3(1)(s) of the SC and ST Act, 1989 were not fulfilled because the video was not made for public view and thirdly that the video itself is in the possession of the police and no recovery is to be made from the petitioner and, therefore, the petitioner deserves the concession of anticipatory bail.

On the other hand, Mr. Naveen Singh Panwar, learned Deputy Advocate General, Haryana has opposed the grant of anticipatory bail on the ground that the present petition is not maintainable in view of the provisions under Section 18 and 18A of the SC & ST Act, 1989. He has further opposed the grant of the bail on the ground that the gravity of offence as well as its effect on large number of people would deprive the petitioner from grant of anticipatory bail. He has further submitted that the petitioner had also been repeatedly putting up these videos on youtube and

consequently, it is not a case that the petitioner has committed this offence only once but he has been putting up such kind of videos repeatedly with sheer audacity and, therefore, his custodial investigation is required especially in view of the fact that it has to be ascertained as to why the petitioner is repeatedly doing all these acts and what was the motive behind the same and also as to when the petitioner had uploaded the video on the youtube.

Mr. Arjun Sheoran, Advocate for respondent No.2 (complainant) has submitted that the present petition for grant of anticipatory bail is not maintainable in view of the provisions of Section 18 and 18A of the SC and ST Act, 1989. He has further elaborated with regard to the modus operandi of the petitioner regarding the present video. He submitted that the petitioner is in fact a youtuber and runs a channel which is known as 'The Om Yadav Show' which has approximately 65,000 subscribers and the petitioner uploads various videos on his channel. The learned counsel has filed the copy of the screenshots of the aforesaid 'The Om Yadav Show' wherein a number of videos have been uploaded on the aforesaid channel being run by the petitioner. The learned counsel has sent these screenshots on email today and a part of the same is also in vernacular. However, keeping in view that the matter is to be heard today by way of video conferencing, it is directed that a copy of these screenshots be taken on record as Mark-X. According to the learned counsel for the complainant, a perusal of these screenshots show that the petitioner runs a show by the name of 'The Om Yadav Show' and it has got 64.3K subscribers and most of the screenshots pertain to the relationship of

different castes including Yadav, Jaats, Aheer and many more. The learned counsel has pointed out that the present video was uploaded by the petitioner on his youtube channel which has been seen by thousands of people across the world and the complainant also viewed the said video alongwith many other persons. He therefore submitted that the plea raised by the learned counsel for the petitioner that it was not in a public view is totally unsustainable because the video is seen by thousands of subscribers of the show. He has further brought to the notice of this Court that after the uploading of the present video the petitioner has uploaded again another video by reiterating the same and by reaffirming that he has done the uploading and will do it again.

I have heard learned counsel for the parties.

The first argument which has been raised by the learned counsel for the petitioner was that with regard to the same video another FIR was registered in Maharashtra and the petitioner has been granted regular bail by the Court of learned Additional Sessions Judge. Such an argument would not be sustainable in view of the fact that the present petition pertains to anticipatory bail and not regular bail. This Court has to examine the maintainability of anticipatory bail in the light of provisions contained under Section 18 and 18A of SC and ST Act, 1989 and, therefore, the aforesaid order passed by Maharashtra Court would have no relevance in the present case. So far as the second argument raised by the learned counsel for the petitioner that the video was not in public view would also not be sustainable in view of the fact that the video is uploaded on youtube and according to the learned counsel for the petitioner it is a part

and parcel of the 'The Om Yadav Show' which is run by none else than the petitioner. The petitioner seems to be a youtuber and if the video is a part of his own show then it cannot be said that it was not in public view. The third argument raised by the learned counsel for the petitioner was that since the video itself is in custody of the police, the custodial investigation would not be required. This argument would also be not sustainable in view of the fact that the police is yet to ascertain as to how and when the petitioner had uploaded the video and what was the motive behind not only the present video but also multiple number of such like videos not only pertaining to the SC and ST community but with regard to the inter-se relationship between other castes and communities as well.

The maintainability of the present petition also deserves consideration. Section 18A(2) of the SC and ST Act provides that the provisions of Section 438(A) of the Code of Criminal Procedure shall not apply to a case under this Act notwithstanding any judgment or order or direction of any Court. The Hon'ble Supreme Court in ***'Prathvi Raj Chauhan Versus Union of India and others'*** [2020 AIR (SC) 1036] while dealing with the provisions of Section 18A held that the bar contained under Section 18 and 18A shall apply to Section 438 Cr.P.C. unless it can be shown that no prima facie case is made out in the complaint and it is only in exceptional circumstances that power can be exercised under Section 482 Cr.P.C. for quashing the cases to prevent the misuse of the provisions on settled parameters. Therefore, it will be imperative to peruse the contents of the video as stated in the FIR and which is a part of the FIR (Annexure P-1). The relevant portion of the FIR which contains the contents of the video is

reproduced as under:-

“Jai Shri Krishan. I Om Yadan welcomes you all in this video. Today's video is going to be very important because in today's video I am present again to talk about Bheemto, shudras and low caste persons. People are very fearful from the SC/CT Act but I openly in front of everyone is challenging themselves that I am worried from this SC/ST Act. These persons may do anything they want to do, I saying clearly that these persons are Chure, Chamar, they are low caste, untouchable and earlier the atrocities so inflicted upon them are totally right. They deserved to be treated like that. There is a proverb about these people, actually not on these people, it is a general proverb but the same is totally fit upon these persons that. Proverb is that 'the shoe of the foot cannot be placed upon the head, if the same will be placed on head, then it will not became crown', and this is the same thing with the Bheemto persons. How much they got educated but there low wrong mindset low mindset will remain as it is. Like these persons there is one Baba Saheb Ambedkar, to whom these people treated himself as their father. He had lots of degrees, whether he was PHD but his mindset belongs to shudras as low. He always talk about and anti constitutional”.

(The aforesaid is reproduced at page 14 of paperback by the petitioner. However the translated portion to the extent that *“I am worried from this SC/ST Act”* is wrong. A perusal of vernacular FIR would show that the translation would be *“I am not worried from the SC/ST Act”*).

A perusal of the aforesaid contents of video as contained in the FIR would show that it cannot be termed as a case where it can be said that

prima facie no offence is made out. Once these contents are aired on the social media and that too on a youtube channel which is run by none else than the petitioner, the bar contained under Section 18 and 18A would certainly apply in the present case.

Therefore, considering the totality of circumstances of the present case, I do not deem fit and proper to grant anticipatory bail to the petitioner.

Consequently, the present petition is hereby dismissed.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

(JASGURPREET SINGH PURI)
JUDGE

02.08.2021

rakesh

whether speaking	:	<i>Yes/no</i>
whether reportable	:	<i>Yes/no</i>