

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

CRM-M-16081-2021 (O&M)

Date of decision: 27.05.2021

Satish Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. C.B. Goel, Advocate for the petitioner.

Mr. Saurabh Girdhar, AAG, Haryana.

Mr. Ankur Lal, Advocate for the complainant.

H.S. MADAAN, J.

Case taken up through video conferencing.

This petition for pre-arrest bail has been filed by petitioner Satish Kumar, an accused in FIR No.0017 dated 06.02.2021, for an offence under Section 3 of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act') and Sections 186, 323, 342, 506 IPC), registered with Police Station Jakhal, District Fatehabad.

Briefly stated facts of the case as per prosecution story are that, criminal machinery in this case was set into motion by complainant Sh. Neer Kumar, Headmaster, Govt. Middle School, Talwara, who in the written complaint submitted by him to the police narrated that he belongs

to the Scheduled Caste category and during the Corona period, he had asked all the teacher working in the school including Satish Kumar (present petitioner) to fill up the admission forms of the children; on 03.02.2021, he told Satish Kumar that admission forms of his students had not been filled up, upon which the petitioner/accused got enraged caught hold of complainant from his neck/collar and gave a slap to him, stating that people like him would not work and work is to be done by the persons who belong to Scheduled Caste category like the complainant; he further stated that he had seen many persons like complainant and he would further see as to what harm could be caused to him by the complainant; inter alia in the complaint, the complainant submitted that he had called for an explanation from Satish Kumar but the latter refused to note down the order calling explanation and that after school hours at about 1.30 PM, when the complainant came to his office, then Satish Kumar caught hold of complainant from his neck/collar and gave beatings to him, threatening to kill him, stating that he knew as to what was caste of the complainant, his status and he passed castiest remarks and threatened the complainant; he illegally confined the complainant; on hearing noises, various staff members reached there and intervened and pacified the matter; on receipt of such complaint, formal FIR was recorded; the investigation in the case started.

Apprehending his arrest in this case, the petitioner had approached the Courts of Sessions at Fatehabad, by moving an application for grant of pre-arrest bail. His such application, which was

assigned to Addl. Sessions Judge, Fatehabad, was, however, dismissed, vide order dated 05.04.2021. Feeling aggrieved, the petitioner has approached this Court, craving for grant of similar relief, which request is being opposed by the State counsel and counsel for the complainant.

I have heard learned counsel for the parties besides going through the record.

In this case, the petitioner-accused has been booked for various offences including offence under Section 3 of the Act. Section 18 of the Act clearly bars grant of anticipatory bail to a person who is accused of committing an offence under this Act.

Section 18-A of the Act provides that for the purpose of this Act, preliminary inquiry shall not be required for registration of FIR against any person or the Investigating Officer shall not require approval for arrest if necessary of any person. Sub-section 2 of the Act clearly dilates that provisions of Section 438 Cr.P.C., shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court. In that way, the present petition is not maintainable and learned Addl. Sessions Judge, Fatehabad has dealt with this aspect in detail, discussing the case law, coming to the conclusion that the occurrence in the present case had taken place in a Government school in the presence of other staff members of the school and as alleged in the complaint submitted to the police by the complainant, the petitioner had threatened and abused the complainant in the name of his caste and he was having knowledge about caste of the complainant from the beginning, therefore

prima facie case for the commission of offence punishable under Section 3(1)(s) of the Act is made out and bar of Section 18 of the Act comes into play. I do not see any reason to disagree with learned Addl. Sessions Judge, Fatehabad in that regard.

Although, learned counsel for the petitioner has filed an application enclosing copy of report in any enquiry said to have been conducted by the District Project Coordinator, Fatehabad in the matter, in support of his contention that no offence under the Act is disclosed. However, I find that this enquiry report is of little help to the petitioner/accused because while finding out entitlement of the petitioner/accused to grant of pre-arrest bail mainly the prosecution version is to be seen and defence of the accused is not to be considered. The matter would have been different if during the course of investigation, the Investigating Officer had come to the conclusion that no offence under the Act is disclosed but this is not the case here. Such type of enquiry report does not help in any manner. Therefore, the petition is doomed for failure on the point of maintainability alone. The judgments referred to by learned counsel for the petitioner-accused **Pardeep Kumar Vs. State of Haryana & Anr., 2020(2) RCR (Criminal) 694, Ajit Singh Vs. State of Haryana & Anr., 2012(1) RCR (Criminal) 507, Shakuntla Devi Vs. Baljinder Singh, 2013 (2) RCR (Criminal) 882, Dr. Subhash Kashinath Mahajan Vs. State of Maharashtra & Anr., 2018(2) RCR (Criminal) 552, Union of India Vs. State of Maharashtra & Ors., 2019(4) RCR (Criminal) 828 and**

Prathvi Raj Chauhan Vs. Union of India & Ors., 2020(1) MLJ (Criminal) 378 and interim order passed on 12.04.2021 in case of **Amarjeet Singh Vs. State of Haryana** in CRM-M-15846-2021 are not applicable, helpful to the petitioner due to different facts, circumstances and context in which such observations have been made. Even otherwise, there cannot be any settled precedent in case of grant of bail because facts and circumstances of each case are different and every case has to be examined on touchstone of the factors relating to grant/refusal of pre-arrest bail, the present petition is not found to be maintainable in view of Section 18 and 18A of the Act.

Even on merits, the petition is bound to fail. The petitioner, a school teacher, belonging to a noble profession, manhandling his superior officer, openly defying his orders, hurling abuses upon him including in the name of his caste, illegally confining him, such acts cannot be taken lightly, rather the petitioner comes out to be a headstrong defiant official showing obnoxious and impertinent behaviour. Such type of person is definitely not entitled to grant of pre-arrest bail, which is to be granted by the Court in rare and exceptional circumstances to save the innocent persons from harassment and inconvenience and not to provide protective umbrella to the criminals enabling them to avoid arrest and interrogation by the investigating agency. If concession of bail is granted to persons indulging in such type of wrongful acts, that would demoralize and dishearten the public servants, in the process affecting their efficiency and devotion to the duty sending a wrong signal in the society that one

can use force against the public servants and get away very easily.

In a recent judgment ***P. Chidambaram Versus Directorate of Enforcement, Criminal Appeal No.1340-2019 arising out of SLP (Crl.) No.7523 of 2019***, the Apex Court in para No.81 has observed as under:

“81. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent – Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail.”

In a judgment ***Shobhan Singh Khanka Versus State of Jharkhand, 2012(2) RCR(Criminal)535***, the Apex Court enumerated the factors, which have to be considered for granting anticipatory bail. This is so mentioned in para No.12 of the judgment, which for ready reference is being reproduced as under:

“12) While considering the claim of pre-arrest bail, the following factors have to be considered:

- (i) the nature and gravity of the accusation;*
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*

(iii) the possibility of the applicant to flee from justice; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested. Considering the limited allegation in the FIR and other details, his academic qualifications including the fact that he does not belong to the State of Jharkhand and has no relatives and is not a Member of the JPSC, acted as Expert No.1 only for a short period, the appellant has made out a case for anticipatory bail. Even if the prosecution has any apprehension, sub-section (2) of [Section 438](#) enables the court concerned to impose such conditions/directions as it may think fit.”

The Apex Court in judgment ***Balchand Jain Versus State of M.P., 1977 CriLJ 225*** had observed that Section 438 of the Code is an extraordinary remedy and should be resorted to only in special cases.

In another judgment ***State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268***, the Supreme Court making distinction between grant of anticipatory bail and regular bail had observed that the rule that bail and not jail is more germane while considering an application for post-arrest bail and consideration which would weigh with the Court for anticipatory bail need not be the same as for an application to release on bail on after arrest.

There is sufficient prima facie material available on the record to believe that the accused has committed offences complained of in the FIR and the apprehension expressed by the State counsel that in case he is granted pre-arrest bail, there are reasonable chances of his

trying to tamper with the prosecution evidence cannot be brushed aside lightly.

Thus, besides the petition being not maintainable on merits also, facts and circumstances of the case do not call for grant of pre-arrest bail to the petitioner and his custodial interrogation is necessary for complete and effective investigation. In case it is denied to the investigating agency that shall leave many loopholes, lacuna and gaps in the investigation, adversely affecting the case of prosecution, which is uncalled for.

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

Anything said herein above shall not be construed as an expression of opinion on the merits of the case.

27.05.2021

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No