

CRM-M No.22774 of 2021

Date of Decision : 08.07.2021

Darshan Singh

...Petitioner

Versus

State of Punjab

....Respondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr.Naveen Batra, Advocate for the petitioner.

Mr. Sukhbeer Singh, AAG, Punjab.

Mr. Vishal Sharma, Advocate for the complainant.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.
2. Prayer in the petition under Section 438 Cr.P.C. is for grant of pre-arrest bail to the petitioner in case FIR No.76 dated 25.05.2021 registered under Sections 294, 506 IPC and Section 3(1) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act') at Police Station Nangal, District Rupnagar.
3. Learned counsel for the petitioner contends that perusal of the FIR does not reveal the allegation that the accused was not a member of the Scheduled Castes or the Scheduled Tribes, an essential requirement so as to attract applicability of the Act. Learned counsel

relies upon the decision of Hon'ble the Supreme Court in '**Gorige Pentaiah** versus **State of A.P. and others**', 2008(4) RCR (Crl.) 171. Relevant extract of the same is reproduced as under:-

"6. In the instant case, the allegation of respondent No.3 in the entire complaint is that on 27.5.2004, the appellant abused them with the name of their caste. According to the basic ingredients of Section 3(1)(x) of the Act, the complainant ought to have alleged that the accused-appellant was not a member of the Scheduled Caste or a Scheduled Tribe and he (respondent No. 3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the accused-appellant was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate respondent No. 3 in a place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law."

4. Learned counsel contends that in the absence of there being an averment in the FIR that accused was not a Member of the Scheduled Caste or the Scheduled Tribe, the provisions of Section 3(1) (x) of the Act are not applicable. Section 3(1) (x) of the Act is reproduced as under:-

"3(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe:-

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view."

5. Learned counsel for the petitioner has also relied upon the decision of a Co-ordinate Bench of this Court dated 18.07.2019 in CRM-M No.19679 of 2019, CRM-M No.19773 of 2019 and CRM-M No.27551 of 2019 in support of his submissions.

6. A perusal of the FIR reveals that there is no mention in the same as to whether the accused is from the higher caste or from the Scheduled Caste/ Scheduled Tribe nor have learned State Counsel or learned counsel for the complainant been able to show from the FIR any averment in the same with regard to the petitioner-accused belonging to a higher caste or the Scheduled Caste/Scheduled Tribe. Thus, one of the essential ingredients for attracting the applicability of Section 3(1) (x) of the Act is missing. Accordingly, it being debatable as to whether Section 3 of the Act would be applicable in the facts of the instant case or not, the bar under Section 18 of the Act would not apply.

7. In the circumstances, without expressing any opinion on the merits of the case, the petition for pre-arrest bail is allowed. The petitioner is directed to join investigation and fully co-operate with the Police. However, in the event of arrest of the petitioner, he be released on pre-arrest bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of the Arresting/Investigating Officer. The petitioner shall also abide by the conditions contained in Section 438(2) Cr.P.C.

However, nothing stated hereinabove shall be taken to be an expression of opinion on the merits of the case.

8. Petition allowed in the aforementioned terms.

(B.S. Walia)
Judge

08.07.2021
'Rajneesh/Amit'

Whether speaking/ reasoned : *Yes/No*
Whether reportable : *Yes/No*