

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

CRM-M-21121-2020(O&M)

Date of decision:-26.7.2021

Bijender

...Petitioner

Versus

State of Haryana

...Respondent

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

Present: Mr.Rajesh Bansal, Advocate
for the petitioner.

Mr.Karan Garg, AAG, Haryana.

Mr.Pankaj Bali, Advocate
for the complainant.

H.S. MADAAN, J.

Case taken up through video conferencing.

This petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by the petitioner – Bijender, aged about 50 years, resident of village Nimbari, District Panipat, an accused in FIR No.0083 dated 9.7.2020, under Sections 34, 420, 447, 506 IPC and section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,

1989 (hereinafter referred to as the Act), registered with Police Station Panipat Sadar, District Panipat.

Briefly stated, the facts of the case as per the prosecution story are that the criminal machinery in this case was set into motion by complainant – Neelam wife of Manoj lodging information with the police alleging that she belongs to Balmiki caste, whereas petitioner Bijender Singh and his wife belong to Jaat community; in January, 2019, accused discussed the matter with the complainant and her husband for raising bank loan for starting a fish farm; the accused offered to give their land to the complainant at a reasonable price; the complainant purchased 2 kanals 2 marlas of land i.e. 1250 square yards for Rs.8,27,000/- on 4.2.2019 making payment through cheque; the complainant applied to Bank of India, Kutani Branch, Panipat for raising loan for running fish farm in the name of M/s Nima Enterprises, village Nimbri, Post Office Rasalu, District Panipat; the bank sanctioned CC limit of Rs.20 lakhs and term loan of Rs.10 lakhs; the land of accused adjoins property of the complainant; it was settled between the complainant and accused that they would keep making repayment of loan amount as per schedule; the accused had deposited only four installments of Rs.30,000/- each and one installment of Rs.80,000/-; the accused took illegal possession of the whole business; resultantly the complainant and her husband were turned out of the fish farm; on 19.3.2020, the complainant and her husband had received notice from the Bank of India for non-payment of installments and non-maintenance of account; the accused started hurling abuses to the complainant in the name of caste threatening to dispossess the

complainant and her husband from the business and took possession of the fish farm knowing that the complainant and her husband belong to scheduled caste; on 10.6.2020, the complainant and her son Himanshu went to the house of accused at 8:30 a.m., then accused and his wife started abusing him turning them out of the house; while the complainant and her son Himanshu were standing in the street, the accused and his wife came in the street and gave abuses to the complainant and her husband in the name of caste further threatening to kill them. On matter being reported to the police, formal FIR was registered.

Apprehending his arrest, the petitioner had approached the Court of Sessions at Panipat seeking grant of pre-arrest bail by filing application, which was however dismissed by learned Additional Sessions Judge (Duty), Panipat vide detailed order dated 24.7.2020. As such, the petitioner has approached this Court by way of filing the instant petition asking for the similar relief, which request is being resisted by the State counsel and counsel for the complainant.

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

At the very outset, it may be stated that the present petition is not maintainable in terms of Sections 18 and 18-A of the Act. Although in the written reply filed on behalf of the State in para No.2, it has been contended that from the investigation of the case and verification carried out, it has come out that wife of petitioner, namely, Kavita has no role in the crime and she is innocent, therefore, her name was struck off on 7.9.2020 and further it has been found that petitioner had actually not used

castiest words for complainant, rather he had occupied the land of the complainant; further he had not given any threat to kill the complainant; therefore Sections 506 and 34 IPC were deleted.

Section 3 (iv) of the Act provides that whoever not being a member of Scheduled Caste or a Scheduled Tribe wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred shall be punished with an imprisonment which shall not be less than six months but which may extend to five years and with fine.

In that way, the conduct of the petitioner comes out to be within mischief of Section 3(v) of the Act.

Section 18 of the Act provides that nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person or an accusation of having committed an offence under this Act. Whereas Section 18A provides that no preliminary enquiry is required for registration of the FIR against any person and the Investigating Officer does not need approval for arrest if necessary, of any person.

In view of such bar coming into play, the petition for pre-arrest bail filed on behalf of the petitioner/accused cannot be accepted and is dismissed accordingly.

26.7.2021

Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

(H.S.MADAAN)
JUDGE