

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

CRM-M-30884-2021(O&M)

Date of decision:-25.8.2021

Darshan Kaur

...Petitioner

Versus

State of Haryana and another

...Respondents

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

Present: Mr.Manoj K. Srivastava, Advocate for
Mr.Joginder Pal Devgan, Advocate
for the petitioner.

Ms.Safia Gupta, AAG, Haryana.

Mr.Rajesh Khurana, Advocate with
Mr.Sanchit Khurana, Advocate
for the complainant.

H.S. MADAAN, J.

Case taken up through video conferencing.

This third petition under Section 438 Cr.P.C. for pre-arrest
bail has been filed by the petitioner – Darshan Kaur wife of Sh.Lakhbir
Singh, resident of village Nathu Chak, Tehsil Patti, District Tarn Taran, an
accused in FIR No.0031 dated 6.2.2021, under Sections 323, 406, 498-A,

506, 34 IPC and Section 3 of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Act), registered with Police Station Mahesh Nagar, District Ambala.

Briefly stated, the facts of the case as per the prosecution story are that complainant Manisha daughter of Lekh Raj, resident of House No.45/23, Shivpartap Nagar, Police Station Mahesh Nagar, District Ambala had submitted a written complaint to the police alleging therein that she was married with Satnam Singh on 21.6.2017 at Clove 99 Hotel, Ambala Cantt.; both of them had met through Facebook and before marriage, she had informed Satnam Singh that she belongs to Harijan community, whereas Satnam Singh came from Jatt Singh community; after the marriage both the spouses started residing together with parents of Satnam Singh at village Nathu Chak (Lohka), Tarn Taran; Satnam Singh joined his job in Merchant Navy; in his absence mother and sister of Satnam Singh started taunting the complainant for bringing less dowry and regarding she belonging to Harijan community; the complainant was being pressurized for registration of the marriage, which she refused; her harassment at the hands of her husband and his family members increased and they stopped giving her maintenance; the complainant informed her parents, who took her along with them to Ambala; on 3.5.2018 the complainant gave birth to a baby girl; thereafter, the complainant was taken back to the matrimonial home by her mother-in-law; after three days the husband of the complainant also came there, then mother-in-law, husband and sister-in-law of the complainant started harassing her mentally; on 24.8.2018 the husband and mother-in-law of the complainant

gave her severe beatings and called her by name of her caste; in the evening parents of the complainant came and took her along with them to Ambala; after 10-15 days the husband and mother-in-law of the complainant came there and took her along with them giving assurance that they would not beat up the complainant and would give her maintenance; the maltreatment of the complainant in the matrimonial home continued; in December, 2018, the husband of the complainant had sent some objectionable photographs of the complainant at mobile phone of her brother Himanshu; ultimately the complainant was forced to submit a complaint to the police, which formed basis for registration of the formal FIR.

Apprehending her arrest in this case, the petitioner had approached the Court of Sessions at Ambala by filing an application seeking grant of pre-arrest bail. Her such application, which was assigned to Additional Sessions Judge, Ambala was dismissed vide order dated 30.4.2021.

It may be mentioned here that the petitioner had approached this Court on two earlier occasions by moving such type of petitions. First petition so filed bearing CRM-M-19125-2021 was dismissed being not maintainable in view of bar of Section 18 of the Act vide order dated 17.5.2021, copy Annexure P5. Second such petition bearing CRM-M-23614 of 2021 had been dismissed vide order dated 23.6.2021, copy Annexure P6, observing that since first petition had been dismissed vide a detailed order dated 17.5.2021, the second petition was not maintainable.

The petitioner/accused felt aggrieved by such order and had

filed a Special Leave Petition before the Hon'ble Supreme Court and Hon'ble Supreme Court vide order dated 29.7.2021, copy Annexure P7 while dismissing the said petition as withdrawn gave liberty to the petitioner to approach this Court again.

Now the petitioner/accused is before this Court for grant of similar relief, which request is being resisted by the State counsel and counsel for the complainant.

I have heard learned counsel for the petitioner, learned State counsel and learned counsel appearing for the complainant besides going through the records.

The first petition filed by the petitioner/accused was dismissed being not maintainable on account of bar to grant of pre-arrest bail provided by Section 18 of the Act. The complainant claims to be belonging to scheduled caste community, whereas petitioner/accused Darshan Kaur belongs to Jatt Sikh community. Though in her complaint to the police, the complainant has alleged that her mother-in-law Darshan Kaur besides her sister-in-law and husband used to call her by name of her caste so as to humiliate her but it has not been alleged that they would do so outside the house or at some public place. For bringing a case within mischief of Section 3(x) of the Act, there should be intentional insult or intimidation with intent to humiliate a member of a scheduled caste or a scheduled tribe in any place within public view. Such instances having allegedly taken place within the matrimonial home and not at a place within public view, the necessary ingredients of offence under Section 3 of the Act are not fulfilled. If it is so then bar of Section 18 of the Act

does not come into play. In case *Prathvi Raj Chauhan Versus Union of India and others* passed in Writ Petition(C) No.1015 of 2018, Hon'ble Apex Court had observed that the accused is entitled to anticipatory bail only in case no prima facie case is made under the Act. As already observed since there is no material to show that the petitioner had been taunting the complainant in the name of her caste at a place in public views, it is doubtful, as to whether offence under Section 3 of the Act is made out, therefore, bar of Section 18 of the Act is not applicable.

Coming to the merits of the case, the allegations against the petitioner/accused are quite vague and sweeping. In the complaint, it has nowhere been alleged that petitioner/accused has committed criminal breach of trust with regard to Instridhan articles of the complainant. Therefore, the custodial interrogation of the petitioner/accused is not found to be necessary as no recovery is to be effected from the petitioner. The petitioner is an old woman of 65 years. In matrimonial cases, there is a tendency to rope in near relatives of the husband to put pressure upon him. The guilt of the accused shall be determined during the trial. There is nothing on record to show that petitioner has got any past criminal record and there does not appear to be any likelihood of her absconding in the process, prolonging the trial or trying to tamper with the prosecution evidence by giving threat or inducement to the prosecution witnesses. Therefore, the petition calls for acceptance.

The present petition is allowed. It is directed that in case of arrest of the petitioner in this case, she be released on bail, subject to the satisfaction of the Investigating Officer/Arresting Officer on the following

terms and conditions:

- (i) that the petitioner shall make herself available for interrogation by a police officer as and when required;
- (ii) that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;
- (iii) that the petitioner shall not leave India without the previous permission of the Court; and
- (iv) that the petitioner shall surrender her passport before the Investigating Officer and if the petitioner is not having passport then shall file the affidavit in that regard.

In case the petitioner violate any term and conditions on which the bail has been granted to her, the prosecution would be entitled to apply for cancellation of bail.

25.8.2021

Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

(H.S.MADAAN)
JUDGE