

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

**CRM-M-30866-2021
Date of decision: 04.08.2021**

Virender

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. J. P. Dhull, Advocate
for the petitioner.

Mr. Deepak Kumar Grewal, DAG, Haryana.

Mr. Jagdish Manchanda, Advocate
for the complainant.

(through video conferencing)

ARVIND SINGH SANGWAN, J. (Oral)

The petitioner prays for grant of anticipatory bail in FIR No. 249 dated 23.06.2021, registered under Sections 323, 506 of the IPC and Section 3(1)(s) of the SC/ST Act, at Police Station Kurukshetra University, District Kurukshetra.

Learned counsel for the petitioner submits that the FIR was registered on a complaint given by Ramkala with the allegations that the petitioner has used derogatory words in the name of his caste and abused him and gave fist blows.

Learned counsel further submits that as per allegations in the FIR, on 20.06.2021, the complainant had gone out and when he felt pressure of answering the nature's call, he went in an open field and while he was easing himself, accused reached at the spot and abused him in the name of

his caste and asked him why he is easing himself in an open field. When the complainant tried to make him understand, he caught hold of complainant and gave him beatings.

Learned counsel further submits that offence under Section 323 IPC is bailable, however, the allegations are levelled in the name of caste just to aggravate the same and to invoke the provisions of SC/ST Act.

Learned counsel further submits that though it is stated that incident happened in an open field, however, no witness is cited by the complainant except that when he raised his voice, he was rescued by Sunder and Jitender, who came later on, after hearing the voice of the complainant.

Learned counsel further submits that even on an earlier occasion, the son of the complainant, who is the Sarpanch of the village, registered an FIR No. 436 dated 26.10.2019 and another FIR No. 419 dated 13.09.2019 in the same police station against co-villagers. It is further submitted FIR No. 436 was quashed by this Court and FIR No. 419 was cancelled by the police during investigation. Learned counsel, thus, submits that the family of the complainant is in the habit of involving the co-villagers in false cases under the provisions of SC/ST Act.

It is also argued that on the face of it, no offence under Section 3(2)(s) of the SC/ST Act is made out as it is the own case of the complainant that he was easing himself in an open field, though he states that his house is at a nearby place.

Learned State counsel, assisted by learned counsel for the complainant, could not dispute the fact that two earlier FIRs, got registered by the son of the complainant, were either cancelled or quashed by this Court. Learned State counsel also could not dispute that with regard to the

allegation of abusing, the complainant states that at the relevant time, nobody was present and it is only after the petitioner gave fist blows, the complainant raised his voice and aforesaid two persons came to rescue him.

Learned counsel for the complainant submits that there is a bar under Section 18 of the SC/ST Act for entertaining an anticipatory bail application under the SC/ST Act, however, it is not disputed that it is held by Hon'ble Supreme Court that in case on the face of it, if no offence is made out; the same does not preclude the High Court in granting the concession of anticipatory bail by exercising the powers under Sections 438/482 Cr.P.C.

A perusal of order dated 14.05.2020 passed in CRR-1354-2019, vide which this Court has quashed the chargesheet against two accused, namely Pardeep Kumar and Sandeep @ Deepa, in the proceedings under the FIR No. 436, got registered by the son of the complainant (who is the Sarpanch of the village), this Court has noticed that it was the fault of the Sarpanch himself as he stopped the construction of a Dharmshala, for which, the Government had granted Rs. 7 Lakh.

After hearing learned counsel for the parties, on the face of it, it appears that it is the complainant party, who is creating trouble to co-villagers by filing similar complaints and in the instant case, despite being facility of toilet at his house, he was easing himself in open field by creating trouble to general public.

Accordingly, the present petition is allowed. The petitioner is granted concession of anticipatory bail, subject to the conditions envisaged under Section 438(2) Cr.P.C.

However, it will be open for the Investigating Officer to call

upon the petitioner to join investigation, if so required, by issuing him a written notice in this regard.

The SHO, Police Station Kurukshetra University, District Kurukshetra is directed to ensure that in future if any such complaint is filed by the complainant's side under the provisions of SC/ST Act, before registration of the FIR, an inquiry should be conducted by an officer not below the rank of DSP.

04.08.2021

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No