

CRM-M-35512-2021

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

CRM-M-35512-2021

Date of decision: 17.11.2021

Gurtej Singh and others

...Petitioners

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Siddharath Gupta, Advocate,
for the petitioners.

Mr. Harpreet Singh Multani, AAG, Punjab.

Mr. R.S.Bains, Sr. Advocate with
Mr. Jalim Ansari, Advocate,
for the complainant.

HARNARESH SINGH GILL, J. (ORAL)

This is the second petition under Section 438 read with Section 482 Cr.P.C. for grant of anticipatory bail in case DDR No. 31 dated 25.7.2021 under Sections 323, 506, 34 IPC and Sections 3 and 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered at Police Station Nehianwala, District Bathinda, in case FIR No.86 dated 13.7.2021 under Sections 379, 411 IPC, registered at Police Station Nehianwala, District Bathinda.

Vide order dated 31.08.2021, this Court passed the following order:

"This is the second petition under Section 438 read with Section 482 Cr.P.C. for grant of anticipatory bail in case DDR No.31 dated 25.7.2021 under Sections 323, 506, 34 IPC and Sections 3

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and 4 of the SC and ST Act, 1989 registered at Police Station Nehianwala, District Bathinda, in FIR No. 0086 dated 13.7.2021 under Sections 379, 411 IPC registered at Police Station Nehianwala, District Bathinda.

Learned counsel for the petitioners submits that no caste based remarks have been uttered by the petitioners and the ingredients of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, are not attracted in the present case; that the present DDR is a counter-blast to the FIR No. 86 dated 13.7.2021, got registered against the persons, who were handed over to the police for committing the theft of wires and oil from the fields of the petitioners and other residents of the village. In support of his arguments, learned counsel has placed reliance on the judgment of the Apex Court in Prathvi Raj Chouhan Versus Union of India and others, W.P (C) No. 1015 of 2018, decided on 10.2.2020.

Notice of motion.

On the asking of the Court, Mr. H.S.Sitta, AAG, Punjab, accepts notice on behalf of the State.

At this stage, Mr. R.S.Bains, Senior Advocate with Ms. Arushi Garg, Advocate puts in appearance on behalf of the complainant. Learned senior counsel submits that the present petition is not maintainable under the SC/ST Act to approach this Court under Section 438 Cr.P.C. and only the appeal is maintainable.

Learned senior counsel further submits that the boys were beaten and handed over to the police without any medical and they were stated to be 'dhed' and the caste based remarks have been uttered by the petitioners.

In the present case, the petitioners are alleged to have uttered caste based remarks to the boys, who were handed over to the police. It is mandatory for the complainant to disclose that the petitioners knew the caste of the boys, however, this fact has not been stated in the present DDR.

Adjourned to 16.11.2021.

Meanwhile, petitioners are directed to join the investigation and if they are sought to be arrested, they shall be released on interim bail to the satisfaction of the Investigating Officer/Arresting Officer subject to the conditions as envisaged in Section 438 (2) of the Code of Criminal Procedure.

However, anticipatory bail, granted while exercising the judicial discretion, should not operate as an inroad into the statutory investigational power of the police.”

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Learned counsel for the petitioners submits that pursuant to the order dated 31.08.2021 passed by this Court, the petitioners have joined investigation.

Learned State counsel, on instructions from ASI Alamjeet Singh, submits that the petitioners have joined investigation and are now not required for any further investigation.

At this stage, learned Senior Counsel representing the complainant reiterates his submissions as noted in the order dated 31.08.2021 passed by this Court, regarding the maintainability of the present petition. However, this Court does not find any merit in the said submissions and is of the view that the present petition filed by the petitioners, is very much maintainable.

In view of the above, without commenting on the merits of the case, the present petition is allowed and the order dated 31.08.2021 granting interim bail to the petitioners, is made absolute, subject to the conditions laid down in Section 438 (2) of the Code of Criminal Procedure.

17.11.2021

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No