

CRM-M-39915-2021

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

CRM-M-39915-2021.
Date of Decision:-28.09.2021.

Mohinder Singh and another

.....Petitioners

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Gursimran Singh Madaan, Advocate for the petitioners.

Mr. Saurav Khurana, DAG, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J. (Oral)

This is a first petition under Section 438 Cr.P.C. read with Section 482 Cr.P.C. for grant of concession of pre-arrest bail in FIR No.42 dated 30.05.2021 under Sections 341, 323, 506 and 34 IPC, and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act of 1989') [added later on], registered at Police Station Kheri Gandian.

On 24.09.2021, notice of motion was issued and the counsel were directed to place on record supplementary statement of the complainant, if any. This Court has been informed that no such supplementary statement of the complainant had been recorded.

Learned counsel for the petitioners, *inter alia*, contends that the allegations against the petitioners as per the FIR are having given stick (*danda*) blows to the complainant and none of the injuries allegedly caused were grievous

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in nature and in fact, all the offences under IPC are bailable. It is submitted that only to make the offence non-bailable, Section 3 of the Act of 1989 has been added subsequently. The Additional Sessions Judge, Patiala, has rejected the bail application of the petitioners by observing that the allegations in the FIR have to read along with Section 3 (2) (v) (a) of the Act of 1989. It has further been argued that even a perusal of the said Section would show that one of the necessary ingredients of the said sub-Section is that the accused person should be aware that such person is a member of the Schedule Caste and Schedule Tribe and in the present case, even as per the statement in the FIR, there is no such knowledge attributed.

Learned counsel for the petitioners has relied upon several judgments including the case of **Pala Singh Vs. State of Punjab**, reported as **2000(1) R.C.R. (Criminal) 817**, to contend that the petitioners would be entitled to anticipatory bail even under the provisions of the Act of 1989, once the petitioners are able to *prima facie* establish that the ingredients of the said offence are not made out.

Learned State counsel has submitted that in fact, in the present case, an inquiry was conducted by the Deputy Superintendent of Police and during the course of inquiry, it came out that the complainant party belongs to the Scheduled Caste and, thus, the offence under Section 3 of the Act of 1989 was added.

This Court has heard the learned counsel for the parties.

Keeping in view the above-said facts and circumstances, moreso, the fact that at the time of registration of the FIR, the offence under Section 3 of the Act of 1989 had not been added and all the offences then were bailable and the attribution against the petitioners was only with respect to inflicting simple injury and that too with a stick (*danda*) and also the fact that subsequently, addition of Section 3 of the Act of 1989 without necessary ingredients of the said Section having been made out, inasmuch as neither in the FIR nor in the

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application (Annexure P-2), it has been stated that the petitioners had the knowledge that the complainant party belong to the Scheduled Caste or Scheduled Tribe and, thus, *prima facie* the ingredients of Section 3 of the Act of 1989 are not meted out and, thus, the bar under Section 18 of the Act of 1989 would not operate in the present case, as held by a Co-ordinate Bench of this Court in Pala Singh (supra), thus, the present petition deserves to be allowed.

Accordingly, the present petition is allowed and the petitioners are granted anticipatory bail in the present case. In the event of arrest, the petitioners shall be released on interim bail subject to furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer. However, the petitioners shall join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438 (2) Cr.P.C.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

(VIKAS BAHL)
JUDGE

September 28, 2021.

sandeep

Whether speaking/reasoned:-

Whether Reportable:-

Yes/No

Yes/No