

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1)	CRA-S-1525-2020 (O&M)
Rahul	...Appellant
Versus	
State of Haryana	...Respondent
(2)	CRA-S-1-2021 (O&M)
Ram Kumar	...Appellant
Versus	
State of Haryana	...Respondent
(3)	CRA-S-23-2021 (O&M)
Narender Kumar	...Appellant
Versus	
State of Haryana	...Respondent
(4)	CRA-S-157-2021 (O&M)
Ashok Kumar	...Appellant
Versus	
State of Haryana	...Respondent
(5)	CRA-S-50-2021 (O&M)
Happy	...Appellant
Versus	

State of Haryana

...Respondent

(6)

CRA-S-51-2021 (O&M)

Bhopal Singh @ Pali

...Appellant

Versus

State of Haryana

...Respondent

Date of decision: 19.04.2021

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

Present: Mr. R.S. Manhas, Advocate for the appellant
in CRA-S-1525-2020 and CRA-S-1 and 51-2021.

Mr. Munish Gupta, Advocate for the appellant
in CRA-S-23-2021.

Mr. Satish Saini, Advocate for the appellant
in CRA-S-157-2021.

Mr. A.K. Malik, Advocate for the appellant
in CRA-S-50-2021.

Mr. Karan Garg, AAG, Haryana
assisted by DSP Bharat Bhushan.

Mr. Arun Sharma, Advocate for the complainant.

H.S. MADAAN, J.

Case taken up through video conferencing.

By this order, the aforementioned appeals are decided being
arising out of the same FIR. Appellants Rahul, Ram Kumar and Narender

Kumar have filed appeals No.CRA-S-1525-2020 and CRA-S-1 and 23-

2021 respectively against the impugned orders, whereby the applications filed by them for grant of anticipatory bail were dismissed, whereas, appellants Ashok Kumar, Happy and Bhopal Singh @ Pali have preferred appeal Nos. CRA-S-157, 50 and 51-2021 respectively against the impugned orders, whereby, the the applications filed by them for grant of regular bail were dismissed by the Court below.

Briefly stated the facts of the case as per prosecution story are that, criminal machinery in this case was set into motion by complainant Jarnail Singh son of Sardara Ram, resident of Ghillour, who in the written complaint submitted by him to the police on 06.10.2020 sought taking of legal action against Ashok Kumar son of Satpal, Rakesh Master Saini, Pandit, all residents of Village Chappra and Happy resident of Gudha, Tehsil Ladwa, District Kurukshetra and 5-6 unidentified persons for kidnapping of Sagar son of the complainant; inter alia, in the complaint, the complainant alleged that he belongs to Scheduled Caste, his son Sagar aged about 22 years and nephew Lovekesh had gone to house of Ajay at night; Ajay son of Naib Singh, resident of Gudha on 05.10.2020 on account of his birthday; Ajay had called several other persons there; when Sagar and Lovekesh were returning home on their motorcycle make Splendor bearing registration No.HR02H-3734, then on the way near bus stop Gudha near Peer Ki Mazaar, Ashok Kumar, Rakesh Master Saini, Pandit, Happy along with 5-6 persons came in their car, intercepted Sagar and Lovekesh going on their motorcycle and gave beatings to them, damaging their motorcycle; they tried to abduct Sagar and Lovekesh, however, Lovekesh was successful in running away; the

culprits, however, took Sagar along with them and since then whereabouts of Sagar were not known and his mobile was also switched off; on receipt of complaint in question, formal FIR was registered initially under Section 3(2)(v) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act') and Sections 120-B, 201, 302, 365 IPC, however, during the investigation, offences under Sections 201 and 302 IPC were deleted, whereas, offence under Section 306 IPC was added.

Apprehending their arrest in this case, appellants/accused Rahul, Ram Kumar and Narender Kumar had filed applications for grant of anticipatory bail before the Court of Sessions at Kurukshetra, but, were unsuccessful. As such, they have approached this Court by way of filing separate appeals in terms of Section 14-A of the Act, whereas, appellants/accused Ashok Kumar, Happy and Bhopal Singh @ Pali, who were arrested in this case had approached the Court of Sessions at Kurukshetra for regular bail but were unsuccessful. Therefore, they have also filed separate appeals before this Court. All the appellants-accused pray that appeals filed by them be accepted.

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

The first and foremost question to be seen in this case with regard to the appellants Rahul, Ram Kumar and Narender Kumar, who are seeking pre-arrest bail is as to whether they can be granted this relief in view of bar of Section 18 of the Act. A perusal of this provision goes to show that it categorically says that nothing in Section 438 Cr.P.C.,

shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under the Act. The FIR in this case has been registered for an offence under Section 3(2)(v) of the Act, besides other provisions of the Indian Penal Code. As stated by complainant in his statement, he belongs to Scheduled Caste, his son allegedly kidnapped and who had died is also to be taken as belonging to Scheduled Caste. Sections 3(2)(v) of the Act provides that punishments for offences of atrocities dilating that whoever, not being a member of a Scheduled Caste or a Scheduled Tribe commits any offence under Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property knowing that that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine.

It is not a case of the accused that they were not aware of the fact that the victim in this case belong to Scheduled Caste community. Thus as the things stand, all the accused are shown to have committed an offence under Section 3(2)(v) of the Act and relief of anticipatory bail was rightly declined to them by the Court of Sessions in view of bar of Section 18 of the Act. Merely, because in the present case, appellants Rahul, Ram Kumar and Narender Kumar have been directed to join investigation and they are said to have been done so; that does not confer any valuable right upon them, making it entitlement for grant of pre-arrest bail, when the statute itself clearly bars the remedy sought for. The same cannot be granted to such accused. As per prosecution story, all the

appellants are shown to be there in the CCTV footage. Thus prima facie their involvement in the incident comes out to be there. Though, the final verdict whether they are guilty or not shall come on conclusion of the trial. I do not see any reason to differ with the Court below, declining pre-arrest bail to the appellants. Even otherwise, the allegations against such appellants are quite grave and serious requiring their custodial interrogation to find out as to how the incident was planned and executed, the names of all the persons involved in execution of the incident and role played by each one of them. In case, custodial interrogation is denied to the investigating agency that shall leave many gaps, loopholes and lacuna, adversely affecting the investigation, then there are reasonable chances of these appellants absconding and trying to tamper with the prosecution evidence even. Although, learned counsel for the appellants have contended that true facts of the case are that the deceased along with other persons had come to house of Ashok Kumar son of Satpal on 05.10.2020 in the evening and Ashok Kumar had been taken to hospital for treatment. FIR No.196 dated 06.10.2020, under Sections 148, 149, 323, 341, 506 IPC was registered at Police Station Babain by Ashok Kumar but I find that such defence of the appellants/accused is not to be considered at this stage. The appellants may give their version to the Investigating Officer or in the trial Court but by putting up such type of story, they cannot make out a ground for grant of pre-arrest bail. The involvement and guilt of the accused is also to be determined during the trial and not in such proceedings, considering the case of appellants/accused for grant of bail. Thus, I find that the concession of

pre-arrest bail was rightly declined to the appellants Rahul, Ram Kumar and Narender Kumar by the Court below and as a matter of fact, the appeals filed by them are not maintainable at all. Therefore, the appeals No.CRA-S-1525-2020 and CRA-S-1 and 23-2021 are devoid of merit and are dismissed accordingly.

As regards, the appeals No. CRA-S-157, 50 and 51-2021 filed by appellants Ashok Kumar, Happy and Bhopal Singh @ Pali respectively, for regular bail having been declined, again I do not find anything wrong in the orders passed by the Courts below in that regard. As already observed, the allegations against the accused are serious. If granted concession of regular bail, there is apprehension of their absconding and trying to tamper with the prosecution evidence. Thus, no ground for grant of regular bail to them is made out. The appeals filed by them are also dismissed accordingly.

19.04.2021
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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No