

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

BAIL APPLN. 766/2021
BAIL APPLN. 781/2021

Date of Decision: 26.10.2021

IN THE MATTER OF:

BAIL APPLN. 766/2021

..... Petitioner

Through: Ms. Mandavi Pandey, Advocate

Versus

..... Respondent

Through: Ms. Neelam Sharma, APP for State
with Inspector Anand Yadav & SI Suresh
Kumar Meena, P.S. New Usman Pur
Mr. Vijay Kumar Goel, Advocate for
Complainant

BAIL APPLN. 781/2021

..... Petitioner

Through: Ms. Mandavi Pandey, Advocate

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..... Respondent

Through: Ms. Neelam Sharma, APP for State
with Inspector Anand Yadav & SI Suresh
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Mr. Vijay Kumar Goel, Advocate for
Complainant

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

1. The present bail applications have been filed under Section 438 Cr.P.C. read with Section 482 Cr.P.C. on behalf of the applicants seeking anticipatory bail in FIR No. 05/2021 registered under Sections 3(1)(r)/3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the SC/ST Act) and Section 506 IPC at Police Station New Usmanpur, Delhi.
2. Learned counsel for the applicants submits that while the applicant-*Sanjay Singh* is the father, the applicant-*Suraj Singh* is his son. He submits that the applicants in the present case are falsely implicated on account of an underlying dispute with respect to dishonour of cheque. She further submits that while the initial cheque was for Rs.1,00,000/-, the complainant has altered the same by changing the figure from Rs.1,00,000/- to Rs.4,00,000/-.
3. Learned counsel for the applicants has further relied on the decision in Prathvi Raj Chauhan v. Union of India and Others reported as **(2020) 4 SCC 727** to submit that the anticipatory bail is maintainable in a case under the SC/ST Act, provided the ingredients of the offence are not made out on *prima facie* reading of the FIR. She further submits that in pursuance of grant of interim protection by this Court vide orders dated 17.03.2021, the applicants have joined the investigation. Lastly, she submits that the applicants are not involved in any other case.
4. Learned APP for the State duly assisted by learned counsel for the complainant has opposed the bail applications. She submits that as per the complaint, casteist remarks were uttered in a place within public view as it has been stated by the complainant that the incident dated 05.10.2020 was witnessed by two independent persons, namely *Ravinder*

Parshad Verma & Arun Sharma. She further submits that the casteist remarks were uttered in the presence of aforesaid two witnesses and the applicants are not entitled to the benefit of anticipatory bail.

5. The Status Report has been placed on record.

6. I have heard learned counsels for the parties and perused the material placed on record.

7. Insofar as maintainability of an application under Section 438 Cr.P.C. in view of bar created by Section 18 of the SC/ST Act is concerned, suffice it to say that the Supreme Court in Prathvi Raj Chauhan (Supra) has held:

“11. Concerning the applicability of provisions of Section 438 CrPC, it shall not apply to the cases under the 1989 Act. However, if the complaint does not make out a prima facie case for applicability of the provisions of the 1989 Act, the bar created by Sections 18 and 18-A(i) shall not apply. We have clarified this aspect while deciding the review petitions.”

8. This view has been reiterated by a separate and concurring judgment of Hon’ble S. Ravindra Bhat, J. in the following manner:

“32. As far as the provision of Section 18-A and anticipatory bail is concerned, the judgment of Mishra, J. has stated that in cases where no prima facie materials exist warranting arrest in a complaint, the court has the inherent power to direct a pre-arrest bail..”

9. The present case is registered under Sections 3(1)(r)/3(1)(s) of the SC/ST Act, which read as under:

“3. Punishments for offences of atrocities.- (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, -

xxx

(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;

xxx

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.”

10. It is well settled that for applicability of Sections 3(1)(r)/3(1)(s) of the SC/ST Act to a case, all the ingredients of the alleged offence are to be made out from the complaint. Notably, an offence under Section 3(1)(r) [formerly Section 3(1)(x)] is not made out simply because the complainant is a member of a Scheduled Caste or a Scheduled Tribe.

11. The basic ingredients that need to be established in order to attract penalty under Section 3(1)(r) of the SC/ST Act are – (i) intentional insult or intimidation with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe and (ii) in any place within ‘*public view*’. Similarly, the basic ingredients in respect of Section 3(1)(s) of the SC/ST Act are – (i) abusing of any member of Scheduled Caste or Scheduled Tribe by caste name and (ii) in any place within ‘*public view*’.

12. The word ‘*public view*’ has not been defined under the SC/ST Act. But, what is to be regarded as a ‘*place within public view*’ has come up for consideration in various decisions. In Asmathunnisa v. State of Andhra Pradesh represented by the Public Prosecutor, High Court of Andhra Pradesh, Hyderabad and Another reported as **(2011) 11 SCC 259**, it has been held that:-

“9. The aforesaid paragraphs clearly mean that the words used are “in any place but within public view”, which means that the public must view the person being insulted for which he must be present and no offence on the allegations under the said section gets attracted if the person is not present.”

13. Prior to this decision, a distinction had been drawn between the expressions ‘public place’ and ‘in any place within public view’ in Swaran Singh and Others v. State through Standing Counsel and Another reported as **(2008) 8 SCC 435** in the following terms:-

“28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 (by calling him a “chamar”) when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression “place within public view” with the expression “public place”. A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies.”

14. The view taken in Swaran Singh and Others (Supra) has been cited with approval in Hitesh Verma v. State of Uttarakhand and Another

reported as (2020) 10 SCC 710, wherein charge sheet against the accused was quashed to the extent of allegations under Section 3(1)(x) of the SC/ST Act [now Section 3(1)(r)]. One of the primary factors that weighed with the Court in arriving at the decision was that it was not the complainant's case that the alleged incident had taken place within 'public view'. A basic ingredient of the section impugned having not been made out, the decision was rendered in favour of the accused.

15. A perusal of the complaint would show that as per the allegations, the incident occurred on 05.10.2020 at about 6:30 p.m. & 7:00 p.m., on which date when the complainant had visited the house of the applicants to demand the outstanding loan amount, the applicants uttered the casteist remarks. It was further alleged that the remarks were uttered in the presence of *Ravinder Parshad Verma & Arun Sharma*. Though, the incident is stated to have occurred on 05.10.2020, the present complaint was lodged after two days i.e., on 07.10.2020. The complainant has stated that on 07.10.2020, the applicant-*Suraj Singh* came to his house and further threatened not to initiate any action which prompted the complainant to lodge the present FIR.

16. As per the Status Report, the Call Detail Records (CDRs) of the complainant as well as the two independent witnesses were collected.

17. During the course of submissions, learned APP for the State, on instructions, has submitted that besides collecting the CDR and location details of the aforesaid persons, the location details of the applicants were also collected. It was further submitted that all the aforesaid persons were using the SIM cards issued by the Jio service provider. The relevant portion of the Status Report reads as under:

“Dated 05.10.2020 from 06.30 p.m.(18.30 Hrs.) to 07.00 p.m.(19.00 Hrs.).

<i>A party</i>	<i>B Party</i>	<i>Date d</i>	<i>Time</i>	<i>Call type</i>	<i>Dura tion</i>	<i>Cell ID</i>	<i>Cell ID Address</i>
8851475 610 (<i>Ravinder parsad</i>)	8459671672 (<i>Ashwani Kumar</i>)	05.10 .2020	18:28: 31	Call In	24 sec.	40587201C6 124	Vipin Sharma X-7/5, street no. 9, braham Puri, Delhi.
8851475 610 (<i>Ravinder parsad</i>)	7217804249	05.10 .2020	19:03: 24	Call In	176 sec.	405872008E 023	A-19, Gali No. 2, Main Road, Braham Puri, Delhi- 110053
9211510 369 (<i>Arun Kumar</i>)	VX- CMDSMS	05.10 .2020	16:41: 04	SMS In	0 sec.	40587201C6 131	Vipin Sharma X-7/5, street no. 9, braham Puri, Delhi.
9211510 369 (<i>Aruin Kumar</i>)	1416680754	05.10 .2020	19:55: 15	Call In	13 sec.	-	Note:- no cell ID and location of tower has been provided by the service provider

8459671 672 (Ashwan i Kumar)	8851475610 (Ravinder parsad)	05.10 .2020	18:28: 31	Call Out	24 sec.	40587201C6 131	Vipin Sharma X-7/5, street.no. 9, braham Puri, Delhi.
8459671 672 (Ashwan i Kumar)	JD-xiaomi	05.10 .2020	19:34: 38	SMS In	0 sec.	40587201C6 112	Vipin Sharma X-7/5, street no. 9, braham Puri, Delhi.

Dated 07.10.2020 at 02.00 p.m. (14.00 Hrs.)

A party	B party	Date	Time	Call Type	Duration	Cell ID	Cell ID Address
8851475 610 (Ravinder parsad)	921 187 066 6	07.1 0.20 21	13:57:2 3	Call Out	61 sec.	405872023 1A24	C-93, Khasra No. 2, Main Road, Pratap nagar, Saboli, Delhi.
8851475 610 (Ravinder parsad)	913 625 628 0	07.1 0.20 21	14:29:2 1	Call Out	122 Sec.	4058720231 A1A	C-93, Khasra No. 2, Main Road, Pratap nagar, Saboli, Delhi.
9211510 369 (Arun)	CP - Metro	07.1 0.20 21	12:50:4 2	SMS In	0 sec.	058720231 A24	C-93, Khasra No. 2, Main Road, Pratap

Sharma)	W						nagar, Saboli, Delhi.
9211510369 (Arun Sharma)	JG-Jio Pay	07.10.2021	14:09:44	SMS In	0 sec.	4058720166413	Gali No. 11, village Saboli, Delhi.
8459671672 (Ashwani Kumar)	9718727475	07.10.2021	13:53:22	Call Out	25 sec.	40587201C6111	Vipin Sharma X-7/5, street no. 9, braham Puri, Delhi.
8459671672 (Ashwani Kumar)	9718727475	07.10.2021	14:24:46	Call Out	62 sec.	0587201C6111	Vipin Sharma X-7/5, street no. 9, braham Puri, Delhi.

18. The Status Report also mentions that in order to find out the Cell ID details of the Tower installed near the house of the applicants, the Investigating Officer had made a phone call from his own Jio mobile number and the same was found to be operating at the Tower installed at *House No. 279, Gali No. 1, Bhagwati Gali, Braham Puri, Delhi*. Though, the location of the applicants was found at their own address, however, the location of the complainant as well as the aforesaid witnesses were not found at the house of the applicants.

19. On a perusal of the FIR and the CDR/location details as mentioned in the Status Report and orally submitted, *prima facie*, it appears that on

05.10.2020 at the time of incident, the location of the applicants and the complainant/witnesses are at different Towers. Without commenting any further on the aspect which would be a matter of trial, the interim protection granted to the applicants vide orders dated 17.03.2021 is made absolute and it is directed that in the event of arrest, the applicants be released on anticipatory bail subject to them furnishing personal bond in the sum of ₹25,000/- each with one surety each in the like amount to the satisfaction of the Arresting Officer/Investigating Officer/SHO of the concerned Police Station and also subject to the further following conditions:-

- (i) The applicants shall join the investigation as and when they are directed to do so by the concerned Investigating Officer.
- (ii) The applicants shall remain available on mobile numbers i.e., 7701884583 & 8287389418 respectively, which they undertake to keep operational at all times during the period of trial.
- (iii) The applicants shall not directly or indirectly try to get in touch with the complainant or any other prosecution witnesses or tamper with the evidence.
- (iv) In case of change of residential addresses/contact details, the applicants shall promptly inform the same to the concerned Investigating Officer/SHO.
- (v) The applicants shall regularly appear before the Trial Court as and when the charge sheet is filed against them.
- (vi) The applicants shall not leave the NCT of Delhi without prior intimation to the concerned Investigating Officer/SHO.

20. The bail applications are disposed of in the above terms.
21. Needless to state that nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case.

(MANOJ KUMAR OHRI)
JUDGE

OCTOBER 26, 2021

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