

105

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

CRM-M-1206-2022

Date of decision : 13.01.2022

Aisha

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Kunal Dawar, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of anticipatory bail to the petitioner in FIR No.301 dated 16.11.2020 registered under Sections 379, 506, 120-B of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) and Sections 3/33/89 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter to be referred as “the SC/ST Act”) at Police Station Sadar Palwal, District Palwal, Haryana.

The brief facts of the case are that the present FIR was registered against 12 persons only on the allegations made by the complainant-Bheekam Singh to the effect that he was owner of land

measuring 8 kanals and constant fights took place between him and the said accused persons with respect to the said land and earlier also, two FIRs had been registered. On 02.09.2020, at about 7:30 AM, in the morning, when the complainant had gone to check up on his land, he saw that there, on the abovesaid land, Bajra crop was being cut down/stolen by the petitioner and the other accused persons and they, in unison, slurred/passed casteist remarks against the complainant.

Learned counsel for the petitioner has argued that the complaint in the present FIR had been given after a period of 10 days from the alleged incident and there was a delay of 42 days in registration of the FIR and the said FIR is a counter blast to the civil litigation, which is pending between the husband of the petitioner namely Sharif and the complainant. It is further argued that the offence under Section 3 of the SC/ST Act is not even remotely made out inasmuch as no specific words have been attributed to the petitioner and it has been stated that all the accused persons had in unison stated the casteist slurs/words, as is alleged in the FIR. It is argued that it is highly unlikely that all the accused persons would be able to say the same thing, together, in one line. It is also submitted that it is nowhere mentioned in the FIR that the petitioner had knowledge that the accused persons belonged to a Scheduled Caste. Reliance has been placed upon the latest judgment of Hon'ble Supreme Court in **Prathvi Raj Chauhan Vs. Union of India and others**, reported as **2020(4) SCC 727**, to contend that in such like situation, the bar under Sections 18 and 18-A of the SC/ST Act would not apply. Further reliance

has been placed upon judgment of a Coordinate Bench of this Court in **Jai Parkash and others Vs. State of Haryana and another**, reported as **2011(3) RCR (Criminal) 217**, to state that in case, it is not specifically averred in the FIR that the petitioner had knowledge that the complainant belonged to a Scheduled Caste, then the offence would not be made out and the bar under Sections 18 and 18-A of the SC/ST Act would not operate. Reliance has also been placed upon the judgment of Coordinate Bench of this Court in **CRM-30576-M-2002 decided on 01.08.2002** titled as **“Jagir Chand vs. State of Punjab”** as well as in **CRM-M-3956-2020 decided on 27.02.2020** titled as **“Baljinder Kaur vs. State of Punjab”** to contend that in case the FIR is a counter blast to the complaint given by the petitioner or if the ingredients of the provisions are not met with, then the bar under Section 18 cannot come in the way of the petitioner being granted the concession of anticipatory bail. It is further contended that in fact, the alleged eye-witness namely Karan, in his statement under Section 161 of Cr.P.C., has not even named the present petitioner. He has further submitted that co-accused of the petitioner namely Hamidi has also been granted the concession of anticipatory bail by this Court vide order dated 18.11.2021 passed in CRM-M-48375-2021.

Notice of motion.

On advance notice, Mr. Praveen Bhadu, AAG, Haryana, appears and accepts notice on behalf of the State and has submitted that he is fully prepared to argue the matter and assist this Court. He has opposed the present petition for grant of anticipatory bail to the petitioner

and has submitted that in view of the bar under Section 18 of the SC/ST Act, the present petition deserves to be dismissed.

This Court has heard the learned counsel for the parties and has perused the paper book.

The petitioner is a 58 year old lady and as per her case, she has been falsely implicated in the case. It is further submitted that the FIR has been registered after a delay of 42 days and there is civil litigation pending between the parties also. Moreover, in the present case, the custody of the petitioner is not required inasmuch as nothing is to be recovered from the petitioner. A perusal of the FIR would show that it has not been specifically stated that the petitioner had any knowledge that the complainant belonged to Scheduled Caste. Even a perusal of the FIR would show that no specific words have been attributed to the petitioner and it has been alleged that all the persons, in unison, had stated casteist slurs/words. The alleged eye-witness namely Karan, in his statement under Section 161 of Cr.P.C., has not even named the present petitioner. The co-ordinate Bench of this Court in **Jagir Chand's** case (Supra) had observed that if in a complaint/FIR it is not mentioned that the accused persons were aware of the fact that the complainant belonged to a scheduled caste, then in such a situation the bar under Section 18 would not apply and the petitioner therein would be entitled to anticipatory bail. Similarly, in **Baljinder Kaur's** case (Supra) it was observed by the co-ordinate Bench of this Court that where an FIR has been registered as a counter blast to a complaint filed by the petitioner, then the bar under

Section 18 would not be an obstacle and the petitioner would be entitled to the grant of anticipatory bail.

Further, it would also be relevant to mention that Hon'ble the Supreme Court in **Prathvi Raj Chauhan's** case (Supra) has specifically observed that in such a situation, bar under Sections 18 and 18-A of the SC/ST Act would not apply. Para 10 of the said judgment is reproduced hereinbelow:-

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

Even, the Coordinate Bench in **Jai Parkash's** case (Supra) has observed that the petitioner must have knowledge that the complainant belongs to a Scheduled Caste and the said fact should be mentioned in the FIR. The co-accused of the petitioner namely Hamidi has also been granted the concession of anticipatory bail by this Court vide order dated 18.11.2021 passed in CRM-M-48375-2021.

Thus, keeping in view the abovesaid facts and circumstances as well as the legal position, bar under Sections 18 and 18-A of the SC/ST Act, is not attracted as, prima facie, the ingredients of Section 3(1) of the SC/ST Act are not made out and thus, the present petition is allowed and in the event of arrest, the petitioner is granted the concession of anticipatory bail subject to her furnishing personal bonds and surety to

the satisfaction of Arresting/Investigating Officer and the conditions envisaged under Section 438(2) of Cr.P.C. However, the petitioner shall join the investigation as and when called upon to do so.

It is made clear, in case, the petitioner fails to join the investigation, then the State would be at liberty to move an application for cancellation of the present anticipatory bail granted to the petitioner.

Nothing stated above shall be construed as an 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.

13.01.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No