

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

205

CRM-M-6875-2022

Date of Decision : 09.03.2022

SURENDER

...Petitioner

versus

STATE OF HARYANA

...Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. S. S. Khurana, Advocate
for the petitioner.

Ms. Dimple Jain, Assistant Advocate General, Haryana.

AVNEESH JHINGAN, J. (ORAL)

This petition under Section 438 of the Code of Criminal Procedure is filed seeking anticipatory bail in FIR No.708 dated 24.12.2021 under Sections 323, 325 and 506 IPC [(Section 3 of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act') added later on] registered at Police Station Model Town, Rewari, District Rewari.

The FIR was registered at the instance of Saroj.

As per the contents of the FIR, complainant was doing job of cleaning at B.M.G Elegant City. On 12.12.2021 when the complainant came for work, Surender (petitioner) misbehaved with her. She informed her family members, they came there and went to the office of the society. Petitioner was called to the office but he never came. The complainant with her family members, alongwith the persons of the society went to the flat of petitioner where the petitioner abused the complainant, used caste based remarks and gave a fist blow on the nose of the complainant. Thereafter, he brought a *danda* and attacked the complainant-party, injuries were inflicted

to Raj Kumar and another. The injured were admitted in Trauma Centre. The MLRs of the injured were produced.

Counsel for the petitioner submits that there is a version and cross-version of the incident. On the same day, the FIR was registered at the instance of the petitioner in the same Police Station giving his version of the incident. He further submits that there was a dispute regarding employing the maids and the residents of the society had given a letter to the SHO on 12.12.2021.

Learned State counsel opposes the prayer relying upon the pleadings of the reply filed. She raises an issue of maintainability of the petition in view of Section 18 of the Act. She further submits that the complainant was doing cleaning job in the society, petitioner is a resident of the society. She further submits that there is CCTV footage of the entire incident. Raj Kumar suffered a fracture in the leg.

Learned counsel for the petitioner submits that the incident took place near the flat of the petitioner, it was not in public view and he was not aware of the caste of the complainant.

Section 18 of Act is reproduced below:-

“18. Section 438 of the Code not to apply to persons committing an offence under the Act. - Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.”

Section 18 of the Act bars applicability of Section 438 Cr.P.C. in cases of having accusation of offence committed under the Act. It is settled law that where *prima facie* case is not made out under the Act, bar of Section 18 of the Act shall not apply.

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As per allegations in the FIR, in the presence of residents of the society and the family members of the complainant, caste based remarks were used by the petitioner. The incident is recorded in CCTV footage. It is not possible for this Court, at this stage, on the basis of the pleadings and contentions to *prima facie* conclude that no case is made out under the Act.

The petition is dismissed as not maintainable.

9th March 2022
rimpal

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No