

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

CRM-M-8479-2022(O&M)

Date of decision : March 03, 2022

Jai Kishan and others

.... Petitioners

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

**Present: Mr. Deepak Girotra, Advocate
for petitioners.**

Mr. Saurabh Girdhar, AAG Haryana.

**Mr. Arjun Sheoran, Advocate
for complainant.**

(Through Video Conferencing)

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HARINDER SINGH SIDHU, J.

This is a petition filed under Section 438 Cr.P.C. for grant of pre-arrest bail to petitioners in case FIR No.225 dated 10.07.2017 registered under Sections 153-A, 504, 505, 506, 34 IPC and under Sections 3 (1) (r) (z) (za) and 3(2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 2016 at Police Station Sadar Hansi, District Hisar.

FIR was lodged on the complaint of one Ajay Kumar who alleged that on 16.06.2017 in village Bhatla, District Hisar, there arose a dispute on the issue of storage of water. 10-15 young boys belonging to Brahmin community assaulted the boys belonging to Dalit community. FIR No.190 dated 16.06.2017 was registered at Police Station Sadar Hansi in connection with said incident. The complainant alleged that the members of the Non-Scheduled Caste community exerted pressure on the members of the Scheduled Caste community to arrive at a compromise.

However, no compromise could be arrived at. Because of that accused in the present case and other persons of upper caste community threatened to boycott the members of Scheduled Castes. Later, they imposed social and economic boycott of members of Scheduled Castes residing in the village.

After registration of FIR, the matter was investigated. The petitioners herein were found to be innocent. The report under Section 173 Cr.P.C. was filed only against one Chander alias Fauji.

Chander alias Fauji filed an application under Section 438 Cr.P.C. for grant of anticipatory bail which was allowed vide order dated 25.07.2017 (Annexure P-2) of learned Additional Sessions Judge, Hisar.

The complainant Ajay Kumar filed a petition in this Court seeking cancellation of bail. Another petition was filed seeking directions for transfer of investigation to some independent agency. These petitions were disposed of by this Court by common order dated 24.10.2019. In the said order, it was observed that the incident had taken place on 15.06.2017. Thereafter, efforts were made at various levels to bring about harmony between different communities residing in the village. Due to these efforts most of the differences were resolved and peace was restored. These petitions were disposed of opining that in view of these developments there remained no requirement to transfer the investigation to another agency.

Jai Bhagwan, who was petitioner in one of the cases filed Writ Petition (Criminal) No.293-2019 titled as 'Jai Bhagwan and others Versus The State of Haryana and others' before Hon'ble the Supreme Court. Vide order dated 18.02.2020, the petitioners suggested names of four superior officers for constituting a Special Investigating Team to investigate the offences. The State of Haryana was asked to agree on any two of the suggested names. However, the case

could not subsequently be taken up because of the Covid-19 situation. The case is still pending before Hon'ble the Supreme Court.

Meanwhile, consequent on the submission of the challan the trial in the case commenced.

After the examination of PW3-Ajay Kumar, an application under Section 319 Cr.P.C. was moved for summoning the petitioners who were absolved by the police. The said application was allowed by Ld. Additional Sessions Judge, Hisar, vide order dated 03.08.2018. CRR-2856-2018 titled as 'Puneet and others Versus State of Haryana and another' and CRR-569-2019 titled as 'Ajay Kumar Versus State of Haryana and another' were filed assailing the order dated 03.08.2018. The said revision petitions were dismissed vide order dated 01.12.2021. Special Leave to Appeal (Crl.) No.10169-2021 preferred by petitioners against the dismissal of Criminal Revision Petitions has also been dismissed vide order dated 17.02.2022. The petitioners preferred an application for grant of anticipatory bail which was dismissed by Learned Additional Sessions Judge, Hisar, vide order dated 09.12.2021.

Mr. Girotra, learned counsel for petitioners has contended that the petitioners had joined investigation. They were never arrested during the course of investigation and were found innocent. They have now been summoned under Section 319 Cr.P.C. He accordingly contends that the petitioners are entitled to be released on bail. He relies on decision of Hon'ble Supreme Court in **Satender Kumar Antil Versus Central Bureau of Investigation and another'** arising out of SLP (Crl)-5191-2021 (decided on 7.10.2021).

Mr. Sheoran, learned counsel for complainant on the other hand contended that this petition is not maintainable. Sections 18, 18-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 2016 specifically bars

the grant of anticipatory bail to the petitioners. The petitioners have enforced the social and economic boycott of Scheduled Castes community in the village which is a serious offence affecting the social fabric.

In **Satender Kumar Antil's** case offences have been divided in four categories A, B, C and D. 'Category A' is of offences punishable with imprisonment of 7 years or less not falling in category B & D. 'Category B' is of offences punishable with death, imprisonment for life or imprisonment for more than seven years. 'Category C' relates to offences under Special Acts containing stringent provisions for grant of bail like NDPS (Sec. 37), PMLA (Sec. 45), UAPA (Sec. 43D (5), etc. 'Category D' relates to Economic offences not covered by Special Acts.

The guidelines are to apply where the accused have not been arrested during investigation and have cooperated throughout in investigation including appearing before the Investigating Officer whenever called.

The case of the petitioners would fall under Category A. The guidelines for grant of bail in respect of Category A are as under:

“CATEGORY A

After filing of chargesheet/complaint taking of cognizance

- a) Ordinary summons at the 1st instance/including permitting appearance through Lawyer.*
- b) If such an accused does not appear despite service of summons, then Bailable Warrant for physical appearance may be issued.*
- c) NBW on failure to failure to appear despite issuance of Bailable Warrant.*
- d) NBW may be cancelled or converted into a Bailable Warrant/Summons without insisting physical appearance of accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.*
- e) Bail applications of such accused on appearance may be*

decided w/o the accused being taken in physical custody or by granting interim bail till the bail application is decided.”

It is not disputed that the petitioners who were named in the FIR had joined investigation. They were never arrested during the course of investigation and were found innocent. They have now been summoned under Section 319 Cr.P.C.

Accordingly, this petition is disposed of with the direction that the petitioners may appear before the Trial Court on or before 25.03.2022 and move application/s for grant of bail. The Trial Court may consider the application/s in the light of the guidelines of the Hon'ble the Supreme Court in Satender Kumar Antil's case (supra).

March 03, 2022
sjks

(HARINDER SINGH SIDHU)
JUDGE

Whether reasoned order : Yes / No

Whether reportable : Yes / No