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

CRM-M-9714-2022

Date of decision : 08.03.2022

Sandeep Panwar and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Virender Soni, Advocate for the petitioners.

Mr. Praveen Bhadu, AAG, Haryana.

Mr. Rahul Singla, Advocate for respondent Nos.2 to 4.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of anticipatory bail to the petitioners in FIR No.673 dated 05.12.2021 registered under Sections 148, 149, 323, 342, 506 of the Indian Penal Code, 1860 and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amendment 2015) (hereinafter to be referred as “the SC/ST Act”) at Police Station Sector 32-33, District Karnal.

Learned counsel for the petitioners has submitted that in the present case, the matter has been compromised on 18.02.2022 and as per the said compromise, respondent Nos.2 to 4 who are the complainant/victims

have already stated that they have no objection in case, the FIR is quashed as the matter has been amicably resolved. It is further stated that the petitioners have already filed a petition under Section 482 of Cr.P.C. for quashing of FIR on the basis of compromise bearing No.CRM-M-7932-2022 and the same is now listed for 24.08.2022. It is argued that even perusal of the FIR would show that the necessary ingredients constituting commission of an offence under the SC/ST Act, much less, under Sections 3(1)(r), 3(1)(s) and 3(2)(va), is not made out inasmuch as it is nowhere stated in the FIR that the present petitioners were aware of the fact that the complainant belonged to a Scheduled Caste, nor it is stated in the FIR that the petitioners belonged to some other caste. It is also argued that the alleged incident had taken place in the residential place and the same cannot be stated to be a public place and further only accused persons were present at the spot of alleged occurrence and no person from the public was present there. 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.

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 petitioners. Mr. Rahul Singla, Advocate appears on behalf of respondent Nos.2 to 4 and has submitted that the matter has been duly compromised and has also prayed that the present petition be allowed and the petitioners be granted the concession of anticipatory bail.

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

It is not in dispute that the matter in the present case has already been compromised as is apparent from compromise dated 18.02.2022 (Annexure P-2) and as per the said compromise, respondent Nos.2 to 4, who are the complainant/victims in the present case, have stated that they have no objection in case the present FIR and the subsequent proceedings arising therefrom are quashed. It has been stated that the said compromise is genuine and has been entered without any coercion or pressure and the same is in order to bring peace and amity between the parties.

Learned counsel for the petitioners as well as respondent Nos.2 to 4 have submitted that in view of the said compromise, the present petition be allowed. It is also not in dispute that the petitioners have filed a petition under Section 482 of Cr.P.C. for quashing of FIR on the basis of compromise bearing No.CRM-M-7932-2022 and in the said petition, notice of motion has been issued and the said case is now pending for 24.08.2022.

In the present case, a perusal of the FIR would show that it has

not even been stated by the complainant that the present petitioners were aware of the fact that the complainant belonged to a Scheduled Caste nor it is stated in the FIR that the petitioner belonged to some other castes. It is also clear from the FIR that the alleged incident is stated to have taken place in the residential place of the complainant.

The co-ordinate Bench of this Court in **CRM-30576-M-2002** **decided on 01.08.2002** titled as **Jagir Chand Vs. State of Punjab** 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. 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 Hon'ble Supreme Court in **Prithvi Raj Chauhan's case** (Supra) has also observed that in case, prima facie case for applicability of provisions of the SC/ST Act is not made out, then the bar under Sections 18 and 18-A shall not apply. Relevant portion of **Prithvi Raj Chauhan's case** (Supra) 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”

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 petitioners are granted the concession of anticipatory bail subject to their 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 petitioners shall join the investigation as and when called upon to do so.

It is made clear, in case, the petitioners fail 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 petitioners.

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.

08.03.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**