

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

**CRM-M No. 19210 of 2022 (O&M)
Date of Decision: 19.05.2022**

Sham Lal Goyal and others

..... Petitioners

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Kanwaljit Singh, Sr. Advocate, assisted by
Mr. Harsh Aggarwal, Advocate
for the petitioners.

Mr. Harpreet S. Multani, Assistant Advocate General, Punjab

Mr. Krishan Singh Dadwal, Advocate, and,
Mr. Amninder Preet, Advocate
for the complainant.

SURESHWAR THAKUR, J. (ORAL)

1. Reply / status report of 18.05.2022, filed on behalf of the State of Punjab, is taken on record. A copy of the same be furnished to the learned opposite counsel(s).

2. In petition FIR No. 0059 of 20.04.2022 (Annexure P-1), registered at Police Station Jaito, District Faridkot, offences constituted under Sections 341, 323, 34 of the IPC, and, under Section 3(1) of the SC/ST Act, 1989, are embodied.

3. The learned State Counsel, as also the learned counsel appearing for the victim-aggrieved vigorously contend, before this Court, that the instant petition cast under Section 438 of the Cr.P.C., where through, a prayer is made for the bail petitioners, becoming enlarged on anticipatory bail, is completely mis-constituted, and, also is not maintainable.

4. The above argument is rested upon the factum, that a statutory bar in respect thereof, is encapsulated in Section 18 of the SC/ST Act. Therefore, this Court becomes constrained to read the purported disparaging casteist utterances allegedly spoken, at the crime site, against the victim-aggrieved. A reading of the above reveals, that the present petitioners, had rather than making disparaging casteists utterances, against the specific caste of the victim, and, or instead of theirs ridiculing the specific category, of the scheduled caste(s), to which, the victim-aggrieved belonged, inasmuch as, their undermining the work of the avocation apposite to the scheduled caste(s), rather theirs merely mentioning him to be a scheduled caste person. Therefore, the mere mentioning of the aggrieved-complainant, as, a scheduled caste person, at this stage, to the considered mind of this Court, does not constitute, any penally disparaging casteist utterances, being made, against the victim, and, nor the bail petitioners, can prima facie become construed to therethroughs undermine the avocation appertaining to the scheduled caste, to which, the aggrieved belonged. The above narration, though is supported by the statements of the members of the scheduled caste category, who were also available at the crime site, but since they make statements alike the one, as, made by the complainant, thereupon, a similar view is to be taken thereons.

5. The learned counsel for the victim submits, that in an unsigned statement made under Section 161 of the Cr.P.C., by the victim, to the Investigating Officer (IO) concerned, he has mentioned certain disparaging casteist words, being spoken at the crime site, but yet since the earlier thereto statement is signed, by the victim, and, the latter is not signed, by him. Therefore, prima facie at this stage, probative value is to be

assigned to the signed statement(s), than to the subsequent unsigned statement. Furthermore, the delay in the makings of the subsequent unsigned statement(s), also makes it tainted with a vice of concoction, and, afterthought.

6. In the wake of the above, since prima facie, at this stage, this Court is of the firm opinion that may be, no offence under the SC/ST Act is made out against the present petitioners. Therefore, the present petition cast under Section 438 of the Cr.P.C. does not invite, the attraction of the bar constituted under Section 18 of the SC/ST Act, against the maintainability of the present petition, nor, this Court is barred to, if otherwise deemed fit, to enlarge the present petitioners on anticipatory bail. However, when the investigation into the petition FIR is almost complete, and, besides when no evidence has been adduced at this stage, by the prosecution, suggestive that in the event of the bail applicants being enlarged on pre-arrest bail, there is every likelihood of theirs fleeing from justice, and, or, tampering with prosecution evidence, therefore, this Court does not deem it fit to order for custodial interrogation of the bail petitioners.

7. In consequence, it is ordered that in the event of arrest of the bail applicant-petitioners, they be released on anticipatory bail, by the Investigation Officer, on theirs furnishing personal and surety bonds in the sum of ₹ 50,000/- each, before him, and, also subject to theirs not tampering with prosecution evidence, and/or not influencing prosecution witnesses, and, also, as and when they are summoned by the investigating officer, through a written Hukamnama, theirs cooperating in the investigations to be made into the offence(s) concerned.

8. In case, the learned State Counsel intimates this Court, that the requisite cooperation has not been made by the bail petitioners, to the IO concerned, thereupon, it is open for him to make a motion, before this Court for cancellation of the order of even date.
9. Disposed of.
10. Any observation made hereinabove is in respect of the disposal of the instant petition, and, shall not be taken to be any observation on the merits of the case, and, nor the learned trial Judge concerned, shall be influenced from the afore order, as and when the learned trial Judge concerned, enters upon the trial, against the accused.
11. Since, the main case itself has been decided, therefore, no order is required to be passed in the pending application(s), if any, and, the same also stand(s) disposed of.

May 19, 2022
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(SURESHWAR THAKUR)
JUDGE

Whether Speaking/reasoned	Yes
Whether Reportable	Yes