

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

104 + 213

**Date of decision: 20.07.2022
CRM-M-27136-2022 (O&M)**

VIJAY SHARMA

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

AND

2.

CRM-M-27852-2022 (O&M)

GURBAKSHISH SINGH SANDHU

.....Petitioner

VERSUS

STATE OF PUNJAB AND ANOTHER

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Ms. Supriya Garg, Advocate and
Mr. Rohan Garg, Advocate
for the petitioner
(in CRM-M-27136-2022).

Mr. Rupinder S. Khosla, Senior Advocate assisted by
Mr. Aman Sharma, Advocate for the petitioner,
(In CRM-M-27852-2022).

Ms. Amarjit Kaur Khurana, DAG, Punjab.

Mr. Satnam Preet S. Chauhan, Advocate
for the complainant.

VINOD S. BHARDWAJ, J. (Oral)

**CRM-25141-2022 IN
CRM-M-27136-2022**

The present application has been filed under Section 482 of
the Code of Criminal Procedure, 1973 (hereinafter referred to as

“Cr.P.C”) for placing on record the amended petition in pursuance of the order dated 15.07.2022 passed by this Court in the aforesaid petitions.

Application is allowed as prayed for.

**CRM-25143-2022 IN
CRM-M-27136-2022**

The present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 for grant of exemption from filing typed/certified copy/legible copy/dim copy of Annexures P-1 to P-11.

Application is allowed as prayed for.

**CRM-M-27136-2022 (O&M) &
CRM-M-27852-2022 (O&M)**

1. This order shall dispose of two petitions bearing CRM-M-27136-2022 titled as “*Vijay Sharma versus State of Punjab*” and CRM-M-27852-2022 titled as “*Gurbakshish Singh Sandhu versus State of Punjab and another*”.

2. The petitioners have filed the instant petitions under Section 438 Cr.P.C. Read with Section 482 Cr.P.C. for grant of anticipatory bail in case bearing FIR No.51 dated 11.06.2022 registered under Section 3 (1) (za) (E) of the Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “SC/ST (Prevention of Atrocities) Act”) and Section 420 and 120-B of the Indian Penal Code, 1860 at Police Station City Morinda, District Rupnagar.

3. For facility of reference, facts are noticed from CRM-M-27136-2022. The matter had come up for preliminary hearing on 22.06.2022 when the following order was passed:-

*“Learned counsel for the petitioner, at the very outset, has contended that the petitioner had first approached the Sessions Court at Rupnagar with a prayer for grant of anticipatory bail. The said application was disposed of vide order dated 17.06.2022 (Annexure P-12), declining to exercise jurisdiction in view of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. As such, the said order would not be an appealable order under Section 14A (2) of the Act. It is contended that the allegations, prima facie, would not be covered under the Act and as such, there would not be a bar to seek bail apprehending arrest from this Court. Learned counsel cites **Prithvi Raj Chauhan vs. Union of India, (2020) 4 SCC 727**, in support of the contention urged.*

Notice of motion for 20.07.2022.

Mr. Tanvir Joshi, A.A.G. Punjab accepts notice on behalf of the respondent-State and seeks time to file reply. Mr. Satnam Singh Chauhan, Advocate has put in appearance on behalf of the complainant and filed memorandum of appearance.

In the meanwhile, the petitioner be not arrested in FIR No.51 dated 11.06.2022 registered at Police Station City Morinda, District Rupnagar, till the next date of hearing. However, the petitioner would join the investigation as and when required, during the said period.”

4. On resumed hearing, learned counsel appearing on behalf of the petitioners contend that the petitioners have already joined investigation and custodial detention of the petitioners is not required for further investigation.

5. Ms. A.K. Khurana, DAG, Punjab does not controvert the said fact and affirms the same on instructions from SI Sudesh Kumar.

6. Sh. Satnam Singh Chauhan, Advocate has put in appearance on behalf of the complainant and has contended that the petition under Section 438 read with Section 482 Cr.P.C. would not be maintainable since the provisions of the SC/ST (Prevention of Atrocities) Act, 1989 have been attracted in the present case.

7. The submission on behalf of the learned counsel was to the effect that the petitioners who are Chairman and Executive Officer of Municipal Council, Morinda have disregarded the roster point while making appointments to the post of Teacher. A pointed query was raised as to how a failure on the part of the officials in making an appointment from a person/member of the Scheduled Castes and Scheduled Tribe would amount to 'obstruction' or prevention of a member belonging to such Castes or community being appointed as contemplated under Section 3(1)(za)(E) of the SC/ST (Prevention of Atrocities) Act. However, the learned counsel could not indicate to any document or evidence to show that the petitioner had 'prevented' or 'obstructed' appointment of a member belonging to the Scheduled Caste by some overt act or deliberate omission. A further specific query was also posed to the learned counsel to refer to the Government instructions/guidelines on the basis whereof he draws the strength to

contend that the action undertaken by the petitioners was an act of deliberate obstruction or prevention in assigning or offering appointment to what might be due to a member belonging to Scheduled Caste or Scheduled Tribe. Learned counsel has however failed to refer to any such statutory instructions or guidelines. Hence, there arises a serious debate as regards the basic ingredients justifying offences under the SC/ST (Prevention of Atrocities), Act being attracted.

8. Furthermore, it has also not been disputed by the learned counsel appearing on behalf of the complainant that he is neither a candidate for appointment to the post of the Teacher nor had he ever sought any appointment with the Municipal Council, Morinda. Learned counsel submits that the proceedings had been initiated by him as he felt aggrieved of the actions committed by the petitioners in not extending what is due to the members of the Scheduled Castes and Scheduled Tribes and had thus initiated the proceedings.

9. I have heard learned counsel appearing on behalf of the respective parties. The Hon'ble Supreme Court has already held in the judgment of "***Prithvi Raj Chauhan versus Union of India***" that jurisdiction of Section 438 Cr.P.C. can be invoked where *ex facie* ingredients for commission of offence punishable under the SC/ST (Prevention of Atrocities) Act are not made out. Even otherwise, the instant petitions also seek to invoke the jurisdiction of the High Court with the aid of Section 482 Cr.P.C. and are not just a simplicitor petitions under Section 438 Cr.P.C.

10. Even though the statute prescribes a remedy in the form of filing of an appeal in terms of Section 14-A of the SC/ST (Prevention

of Atrocities) Act, 1989, the same *ipso facto* does not prohibit the Court from taking cognizance of a petition that has been filed with the aid of Section 482 Cr.P.C.. Availability of alternative remedy is not a bar to the jurisdiction of a Court to exercise its inherent powers.

11. Now advertent to the issue of custodial detention, the same is the prerogative of the Investigating Agency. The petitioners having already joined and not being required for further investigation by the agency in the instant case, it would be contrary to the interest of justice to still subject the petitioners to custodial detention. The power to arrest has been distinctly segregated from the need to arrest. A justification for seeking custodial detention has to be made out by the State by establishing that there is a strong possibility of an accused likely to abscond from process of law or to tamper with the prosecution case or that the offence is shocking to the collective conscience of the society looking at the nature of offence, its gravity and manner of its execution alongwith the antecedents of an accused. Where no valid basis for such apprehension against an accused is not available, merely because the State would have the power to arrest would not be a cause sufficient to mandate that an accused must necessarily be arrested.

12. Without commenting any further on the merits and noticing the facts as aforesaid, the interims orders dated 22.06.2022 and 30.06.2022 respectively are made absolute.

13. However, if required, the petitioners shall continue to join investigation as and when required to do so and shall abide by the terms and conditions, as laid down under Section 438 (2) Cr.P.C.

14. Nothing stated herein should be construed as an expression

on the merits of the case and the competent Court shall decide the case
on the strength and merits of the evidence adduced before it.

(VINOD S. BHARDWAJ)

JUDGE

JULY 20, 2022

Vishal sharma

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No