

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

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**CRM-M-31245-2022
Decided on : 09.08.2022**

Jaswant Singh

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

PRESENT: Ms. Jasmandeep, Advocate for
Ms. Satwant Mehta, Advocate
for the petitioner(s).

Mr. Bhupender Beniwal, AAG, Punjab
for the respondent-State.

SURESHWAR THAKUR, J. (Oral)

1. The petitioner, by filing the present petition, cast under Section 438 of Cr.P.C., seeks grant of anticipatory bail in case FIR No.0062 of 07.06.2022, registered at Police Station Kathuanangal, District Amritsar (Rural), wherein offences constituted, under Section 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'the Act') (Amendment 2015), are embodied.

2. Though, through a statutory bar engrafted in Section 18 of the Act, the instant petition claiming relief of pre-arrest bail, is not maintainable before this Court, but the learned counsel appearing for the petitioner, has argued that since the ingredients of Section 3(1)(s) of the Act, which stands extracted hereinafter, are not evidently made out, from a reading of the same:-

“3. *Punishments for offences atrocities: (1) Whoever, not being a*

member of a Scheduled Caste or a Scheduled Tribe,--

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;”

3. Therefore, she contends that since the expressions of purported derogatory casteist utterances, against the accused, if made rather, were to be made in any place within public view. Consequently, she argues that since in this petition, the purported derogatory casteist utterances, were not made in public view, and, assumingly, if they were made, they were allegedly uttered only to the aggrieved in a place rather outside public view. In consequence, she contends, that the above statutory bar against the institution of the instant petition, claiming relief of pre-arrest bail, becomes relaxed, and, hence makes the petition to be maintainable, as *prima facie*, the inculcation drawn against the present bail petitioner under the Act, has *prima facie*, no force, rather, is completely false. To determine the vigour of the above argument, it is necessary to extract the relevant portion of the FIR, which is extracted as under:-

“..... That the said accused Jaswant Singh who belongs to the Jatt caste and we belong to the scheduled caste because of his resentment the said accused 1, Jaswant Singh on 30.03.2021, came to my house with unknown persons on four vehicles and the said accused also had lethal weapons in their hands, came and started breaking our door and started abusing that today we want to teach a lesson to you of Kute Chuhre (derogatory remarks) for marrying a girl of a higher class and we will not let you Kute Chure to stay in this village and in front of the people of the village, the said accused kept using derogatory words again and again against our caste and on seeing the people gathering, the accused escaped on the spot and were threatened that today you have been saved but when we got a chance we would kill your whole

family.”

4. A reading of the hereinabove extracted relevant portion, of the FIR, discloses that though there is an echoing therein, that the purported derogatory casteist utterances, as made by the present bail petitioner, to the victim, were made in the presence of a large gathering of the village, but yet none of the members of the large gathering, in whose presence, the above purported derogatory casteist utterances, were made, are named in the FIR.

5. Though the learned State counsel argues, that subsequently, some of the persons, who were available at the crime site, and, in whose presence, the purported derogatory casteist utterances, were made, when do rather, in their respective statements, as, recorded before the investigating officer concerned, explicitly state that in their respective presence, the above utterances were made by the petitioner to the victim. Therefore, on the basis of above, the prosecution attempts to sustain the allegations against the petitioner, but the above attempt of the prosecution may not acquire any legal worth. The reason being that, only, if the victim complainant in his previous statement made to the police, and, which resulted in the registration of the FIR, had rather named the persons, in whose presence, the present bail petitioner had uttered the purported derogatory casteist utterances, thereupon, alone the investigation officer concerned, could proceed to call them to record their statements in writing, otherwise not. Since, as above stated, in the FIR, the complainant does name any of the villagers, in whose presence the purported derogatory casteist utterances were expressed, as such, the subsequently made inculpatory statements in writing by some persons concerned, are completely unworthwhile, and, also are stained with a blemish of afterthought.

6. Moreover, in the instant case, despite the victim not naming the persons in whose presence, the purported derogatory casteist utterances, were made by the present bail petitioner against the complainant, yet, subsequently, the persons concerned proceeded to record statements hence inculcating the accused, therefore, the effect of the above subsequent statements, being made by the persons concerned, in support of the contents of the FIR, despite theirs not being named therein, is that, the subsequent statements of the persons concerned, acquire the taint of theirs inventing or concocting the factum of the purported derogatory casteist utterances, rather being made in their respective presence by the petitioner to the victim.

7. If so, the subsequent statements of persons concerned, hence, inculcating the petitioner, are *prima facie*, unworthy of credence, and, the further consequence thereof, is that, the purported derogatory casteist utterances, were not made within public view, rather, were allegedly made in private to the victim. The resultant effect thereof, is that, when for a valid inculcation being drawn under Section 3 of the Act, there is a statutory requirement *qua* the purported derogatory casteist utterances, being made in public view, whereas, for reasons (*supra*), in the instant case, the purported derogatory casteist utterances, were not made in public view, but may be, were made in private, and, only to the victim. In consequence, *prima facie*, the inculcation drawn against the petitioner *qua* breach being caused to the mandate of the Section 3 of the Act, is not, *prima facie*, rather merit-worthy.

8. Moreover, the learned State counsel submits that, even there is a whatsapp exchange of the abovesaid casteist utterances, amongst the victim and the petitioner, but yet the said utterances, are not at this stage, *prima facie*, proven to be viralized, nor hence, when they became viewed by others

than the victim, thereupon, it can also be said that the said whatsapp messages, were merely personally exchanged amongst the victim and the petitioner, and, were never in public domain nor in public view.

9. Be that as it may, the effect of the above, is that, and, especially when no evidence has been adduced by the prosecution, suggestive that in the event of the petitioner becoming admitted to pre-arrest bail, there is every likelihood of fleeing from justice, or, tampering with the evidence, *qua* thereupon, this Court becoming constrained to admit the present petitioner to pre-arrest bail.

10. Therefore, the present petition is allowed, and, in the event of the arrest of the present bail petitioner, the investigating officer may not arrest the present bail petitioner, however, subject to his furnishing personal, and, surety bonds in the sum of Rs.50,000/- each, to the satisfaction of the arresting officer, and, also subject to his rendering co-operation to him, in the investigations to be carried into the offences mentioned in the present FIR. Moreover, also with an undertaking, that he shall not tamper with prosecution evidence, and, nor shall influence the prosecution witnesses.

(SURESHWAR THAKUR)
JUDGE

August 09, 2022

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No