

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

201

CRM-M-37321-2021

Date of Decision: 29th March, 2022

SANDEEP KAUR AND ANR.

... Petitioners

Versus

KIRAN AND ANR.

... Respondents

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

Present: Mr. Harminder Singh, Advocate,
for the petitioners.

Mr. J.S. Mehal, Advocate for respondent No.1.

Ms. A.K. Khurana, DAG, Punjab.

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VINOD S. BHARDWAJ, J. (ORAL)

Instant petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioners in criminal complaint No.COMA/206/2017 dated 28.09.2018 filed under Sections 323, 325, 452, 379-B, 411, 427, 34 of IPC and Sections 3 and 4 of SC/ST Act, wherein the order of summoning dated 13.01.2020 has been passed.

Learned counsel for the petitioner *inter alia* contends that the petitioner is a regular government servant and is working in the Punjab Health Department. The petitioner No.2 is a retired government employee and is a senior citizen of more than 75 years of age and is suffering from various ailments. It is contended that respondent No.1 – Smt. Kiran Devi is a Government Teacher and resides in the neighbourhood of the petitioners. The said respondent No.1 has matrimonial dispute with her husband namely Rameshwar Singh, who is Deputy Superintendent of Police and was then posted at Pathankot. It is submitted that respondent No.1 is habitual of

making false complaint against everyone and there are more than 20 cases that have been filed so far by her. It is also pointed out that respondent No.1 is facing a departmental inquiry for dereliction in duty and continuous absence of more 100 days, forgery and fabrication of forged medical certificates. The complaint in this regard was made by the petitioner and an inquiry was conducted by the police officials resulting into recommendation of registration of an FIR by the Senior Superintendent of Police against the respondent No.1. Resultantly, the respondent no.1 is having a grudge and nurturing ill-will against the petitioners. With a view to harass the petitioners and in furtherance of her such intentions, the complaint in question was instituted, in which there is reference of two separate incidents i.e. one dated 01.05.2017 alleging that the accused persons entered her house and attacked and the second incident is alleged to have taken place on 21.05.2017, wherein no time has been mentioned about the allegations pertaining to use of derogatory and abusive language. Learned counsel also submits that the Magistrate has summoned the petitioners as well as other accused in a mechanical manner and without referring to the necessary provisions of law. He further contends that the co-accused Mandeep Singh had filed a petition for seeking anticipatory bail before the Sessions Court at Gurdaspur and the same was granted to him by the Addl. Sessions Judge, Gurdaspur vide order dated 06.02.2020. The said order granting bail to the co-accused has not been challenged and has become final. He further contends that the learned Additional Sessions Judge, Gurdaspur had dismissed the application filed by the petitioner seeking anticipatory bail by making reference to the judgment of the Hon'ble Supreme Court in the

matter of **Vilas Pandurang Pawar and another Vs. State of Maharashtra and others**, reported as **2012(4) RCR (Criminal) 761**, in view of the specific bar to the effect, the anticipatory bail under Section 438 of the Code of Criminal Procedure would not be granted. He submits that the aforesaid judgment of the Hon'ble Supreme Court was considered by a Bench of the Supreme Court in the matter of **Dr. Subhash Kashinath Mahajan Vs. State of Maharashtra** reported as **2018(2) RCR (Criminal) 552** and it was held by the Hon'ble Supreme Court that there is no specific ban on grant of anticipatory bail under SC/ST (Prevention of Atrocities) Act, 1989 and that if no prima facie case is made out or there appears to be an abuse of process of law, the said aspect can be duly taken into consideration by the Court while exercising the jurisdiction. He further submits that the perusal of the complaint in its entirety would also not make out any case against the petitioners and further that pursuant to the orders passed by this Court on 09.09.2021, the petitioners have already surrendered before the trial Court and were enlarged on interim bail. He prays that the instant petition may be disposed of with a direction to the Sessions Court, Gurdaspur to reconsider the application, if any, so preferred by the petitioners under Section 438 of the Cr.P.C. by taking into consideration the latest developments in law.

Learned counsel appearing on behalf of the respondent No.1 has no objection to the same and agrees to the matter being sent to the Court of Sessions for a fresh decision.

With the consent of the parties, the instant petition is disposed of with a direction to the Sessions Court, Gurdaspur that in the event of the petitioners preferring a fresh application seeking pre-arrest bail, the

same shall be considered and decided afresh without being influenced by the order dated 19.08.2021 as passed in CIS No. BA-261 of 201 arising out of Criminal Complaint No.COMA/206/2017.

In the meanwhile, in order to enable the petitioners to approach the Court of Sessions, the interim protection, already extended by this Court vide order dated 09.09.2021, shall remain operative for a period of three weeks from today.

(VINOD S. BHARDWAJ)
JUDGE

29.03.2022.
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No