

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-40836-2021

Date of decision : 23.03.2022

Simranjit alias Simranjit Kaur

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr. Ajiteshwar Singh, Advocate
for the petitioner.

Mr.Sarabjit Singh Cheema, AAG, Punjab.

VIKAS BAHL, J.(ORAL)

This is a first petition under Section 438 read with Section 482 Cr.P.C. seeking grant of anticipatory bail to the petitioner in FIR no.79 dated 25.07.2021 registered under Sections 323, 342 and 149 IPC read with Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short "SCST Act").

On 30.09.2021, a coordinate Bench of this Court was pleased to pass the following order:-

"The case has been taken up for hearing through video conferencing.

Learned counsel for the petitioner contends that even if the allegations forming subject matter of FIR in question are taken to be correct on their face value, no offence is made out keeping in view the lodging of FIR No.78 dated 25.07.2021 by the petitioner party in the context of kidnapping of minor daughter of the petitioner. The alleged incident arising out of FIR in question is normal instinct of FIR No.78. Even otherwise, contents of FIR in question are wanting on legal parameters of knowledge with the

petitioner i.e. whether the petitioner was having knowledge of the complainant being member of Scheduled Caste. The alleged occurrence would also remain debatable in the context of place of occurrence being a public view.

Notice of motion for 07.01.2022.

In the meanwhile, petitioner is directed to appear before the SHO/Investigating Officer to join investigation on 04.10.2021 at 11.00 A.M. and in the event of her arrest, she shall be enlarged on interim bail, subject to her furnishing requisite bail bonds/surety bonds to the satisfaction of Arresting Officer. However, petitioner shall abide by the conditions as envisaged under Section 438(2) Cr.P.C.

Nothing expressed hereinabove shall be construed to be an opinion in the merits of the case. The case shall be decided on the merits on the adjourned date.

30.09.2021

(RAJ MOHAN SINGH)
JUDGE”

Learned State counsel, on instructions from ASI Ravinder Singh, has submitted that the petitioner has joined investigation on 23.08.2021 and is not required for further investigation.

Learned counsel for the petitioner has reiterated the fact that FIR no.79 is a counter blast to FIR no.78 (Annexure P-2) registered by the petitioner's mother-in-law and a perusal of the FIR no.79 dated 25.07.2021 (Annexure P-3) would show that it has not even been stated that the petitioner or the other accused were aware that the complainant belongs to the scheduled caste community. It has been submitted that in such circumstances, it has been repeatedly held that the bar under Section 18 of the SCST Act would not be attracted. 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. Reliance has also been placed upon the judgment of coordinate Bench of this Court in case titled as “*Om Parkash Sharma vs. U. T. Chandigarh*” reported as *2001(3) RCR (Criminal) 840*, judgment in *CRM-M-3956-2020* titled as “*Baljinder Kaur vs. State of Punjab*” decided on 27.02.2020 and judgment in *CRM-M-30576-M-2002* titled as “*Jagir Chand vs. State of Punjab*” decided on 01.08.2002 to contend that in case the FIR is a counter blast to the complaint given by the petitioner or if the ingredients of the provisions are not met with, then the bar under Section 18 cannot come in the way of the petitioner being granted the concession of anticipatory bail.

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

The co-ordinate Bench of this Court in *Jagir Chand's* case (supra) 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. Similarly, in *Baljinder Kaur's* case (supra) it was observed by the co-ordinate Bench of this Court that where an FIR has been registered as a counter blast to a complaint filed by the petitioner, then the bar under Section 18 would not be an obstacle and the petitioner would be entitled to

the grant of anticipatory bail.

Further, it would also be relevant to mention that Hon'ble the Supreme Court in ***Prathvi Raj Chauhan's*** case (supra) has specifically observed that in such a situation, bar under Sections 18 and 18-A of the SC/ST Act would not apply. Para 10 of the said judgment 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”

Even, the Coordinate Bench in ***Jai Parkash's*** case (supra) has also 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.

Thus, keeping in view the abovesaid facts and circumstances as well as 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 the present petition is allowed and the interim order dated 30.09.2021 is made absolute.

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 petition.

(VIKAS BAHL)
JUDGE

March 23, 2022

Davinder Kumar