

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

CRA-S-1901-2022

Date of Decision: 12.12.2022

MASTER 'B' (BAJRANT @ MOLIYA)

...Appellant

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. D.P.S. Bajwa, Advocate
for the appellant.

Mr. Amrik Narwal, D.A.G., Haryana.

HARSH BUNGER, J.

Prayer in the present appeal is for grant of anticipatory bail to the appellant in case FIR No.178 dated 14.04.2022 (Annexure P-1) registered under Sections 147, 149, 323, 341, 506 of the Indian Penal Code, 1860 (hereinafter to be referred as "the IPC") and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter to be referred as "the SC/ST Act") at Police Station Sadar Fatehabad, District Fatehabad, Haryana.

The brief facts of the case are that FIR No.178 was registered against five persons only on the allegations made by the complainant- Shiv Kumar son of Ramesh Kumar, resident of Badopal, District Fatehabad, Haryana. The complainant alleged that on 13.04.2022 at around 3.15 p.m., when he was going to his home after taking the exam, then one car bearing No. HR 26BK 001 obstructed his way and five persons alighted from the car. Complainant was knowing the names of three of them

i.e. Sachin, Bhaskar and Ankush and there were two unknown persons. Said five persons had allegedly given beatings to the complainant – Shiv Kumar and his friend Dilkar and upon seeing the general public, all accused persons fled from the spot while giving threats to kill the complainant on another available opportunity.

Learned counsel for the appellant has stated that in the present case, the appellant has not been named in the FIR and neither any specific allegation has been made against him. It is submitted that on the date of alleged occurrence, the appellant was a juvenile. It is further submitted that the appellant is sought to be implicated on the basis of an alleged disclosure statement of Sachin, which is not admissible. It is submitted that as per the FIR the alleged incident occurred at about 03:15 PM on 13.04.2022 and the FIR was registered on 14.04.2022 at 21:05 p.m. Thus, there is an unexplained delay of more than 24 hours in registration of alleged FIR. It is submitted that one of the co-accused Sachin was granted regular bail vide order dated 14.06.2022 passed by the learned Additional District and Sessions Judge, Fatehabad. Apart from Sachin, three other co-accused namely Pawan Kumar, Gobind and Gurdeep were also arrested, however they are also on regular bail.

While referring to FIR, learned counsel for the appellant has submitted that no offence punishable under Section 3 of SC & ST Act is made out against the appellant. The relevant extract of FIR reads thus:

“...that Sachin son of Mahavir Bishnoi Bhaskar son of Rajender caste scheduled caste residents of Badopal and Ankush Pandit resident of MP Rohi and two other persons obstructed my way, caused injuries to me without any cause, threatened to kill me by life. Stringent action may kindly be taken against them. Statement read over,

understood which is correct and while going away gave casteist abuse to me...”

Learned counsel for the appellant has argued that the offence under Section 3 of the SC/ST Act is not even remotely made out inasmuch as no specific words have been attributed to the appellant and only general and vague allegation has been made that while going away gave casteist abuse, as is alleged in the FIR. It is also submitted that it is nowhere mentioned in the FIR that the appellant had knowledge that the accused persons belonged to a Scheduled Caste. 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 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 appellant 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.

Reference is also made to the judgment of Hon'ble Supreme Court in ***Hitesh Verma v. State of Uttarakhand***, reported as **2020(4) RCR (Criminal) 868**, wherein the following observation was made:

“18. Therefore, offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste...”

Mr. Amrik Narwal, Deputy Advocate General, Haryana, appears and has opposed the prayer of anticipatory bail by the appellant and has submitted that in view of the bar under Sections 18 and 18-A of the SC/ST Act, the present appeal deserves to be dismissed. While referring to the reply filed on behalf of Respondent No. 1 – State of Haryana, learned State counsel submitted that the complainant had tendered one affidavit to the Investigating Officer wherein it was asserted that name of two accused namely Bhaskar and Ankush has been wrongly mentioned and real accused of the occurrence is Sachin. Accordingly, Bhaskar and Ankush were found innocent. It was further submitted that Sachin got his disclosure statement recorded that on the day of occurrence, he alongwith Govind alias Hunny, Pawan and present Appellant caused injuries to the complainant. It is also submitted that recovery of *danda* used in the occurrence has to be recovered from the appellant, accordingly, dismissal of appeal was prayed for.

I have heard the learned counsel for the parties and has perused the paper book.

Appellant has not been specifically named in the FIR and there is delay of more than 24 hours in lodging the FIR. Moreover, appellant is sought to be implicated on the basis of an alleged disclosure statement of Sachin, the veracity/authenticity of such disclosure statement shall be considered during trial. A perusal of reply filed on behalf of the State would show that four co-accused namely, Pawan, Govind Rai, Gurdeep and Sachin have already been granted bail.

A perusal of the FIR would show that it has not been specifically stated that the appellant had any knowledge that the complainant belonged to a Scheduled Caste and even no specific words

have been attributed to the appellant and it has been alleged that all the persons, had made casteist remarks. It is well settled 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 Sections 18 and 18-A of the Act, 1989 would not apply.

It is apposite to state here that Section 18-A inserted in the Act, 1989, was questioned before the Supreme Court in *Prathvi Raj Chauhan v. Union of India and others*, AIR 2020 SC 1036, wherein, while considering the provisions of Section 18A of the Act, the Hon'ble Apex Court held that if prima facie case of applicability of the provisions of the Act is not made out, the bar created by Section 18 would not apply. The relevant para is quoted below:

“10. Concerning the applicability of provisions of section 438 Cr.P.C, 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”

Keeping in view the abovesaid facts and circumstances as well as legal position, the bar under Sections 18 and 18-A of the SC/ST Act, is not attracted in the present case as, prima facie, the ingredients of Section 3(1) of the SC/ST Act are not made out and thus, the present appeal and appellant's prayer for grant of anticipatory bail is allowed and in the event of arrest, the appellant shall be released on bail subject to furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer. The Appellant shall join the investigation as and when called upon

to do so and shall abide by the conditions as provided under Section 438(2) of Cr.P.C.

However, 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 appeal for grant of anticipatory bail.

Present appeal is accordingly disposed of in the afore-stated terms.

December 12, 2022
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No