

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

CRA-S 1983 of 2022

Date of Decision:- 07/10/2022

Harjit Kaur

.....Appellant

Versus

State of Punjab

CORAM:- HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Gulzar Mohammed, Advocate for the appellant.

Mr. Mohit Kapoor, Addl. AG Punjab for the respondent
State.

Mr. KK Sehjal, Advocate for the complainant.

NIDHI GUPTA, J(Oral).

This appeal under Section 14A(2) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the SCST Act') is directed against the order dated 30.09.2022 passed by Additional

Sessions Judge, Jalandhar vide which anticipatory bail application moved by the appellant under Section 438 Cr.PC was dismissed. Appellant had sought anticipatory bail in criminal case arisen out of FIR No. 75 dated 22.9.2022 registered under Sections 354-A, 506 IPC; and subsequently offence under Section 3 of the SCST Act was added later on, on 25.9.2022 vide Rapat No. 20, PS Patara, District Jalandhar (Rural).

The impugned order dated 30.9.2022 reads as under:-

“Through this application prayer has been made to admit the applicant on anticipatory bail in FIR registered u/ss 354-A, 506 IPC and u/s 3 of the SC & ST (Prevention of Atrocities Act,1989). However, in view of the notification dated 1st January 2016 and notification dated 20th August, 2018 issued by Ministry of Law and Justice, anticipatory bail under SC & ST (Prevention of Atrocities Act 1989) is barred. Therefore, for this short ground, this application being not maintainable is dismissed. File be consigned to Record Room.”

Relevant parts of the above-referred Notifications are as follows:-

Relevant extract of Notification dated 1st January, 2016

“In section 3 of the principal Act -

- (i) for sub-section (1), the following sub-section shall be substituted namely:-

‘(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

.....(a)..... to (q).....XXXXXXXXXXXXXXXXXXXXX

(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(w) (i) XX

(ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.”

Relevant extract of Notification dated 17th August,2018,
(inadvertently mentioned in the impugned order as 20.8.2018)

“2. After section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the following section shall be inserted, namely: —

"18A. (1) For the purposes of this Act, —

- (a) preliminary enquiry shall not be required for registration of a First Information Report against any person; or
- (b) the investigating officer shall not require approval for the arrest, if necessary, of any person, against whom an accusation of having committed an offence under this Act has been made and no procedure other

than that provided under this Act or the Code shall apply.

(2) The provisions of section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court."

A perusal of the above Notification dated 17.8.2018 shows under Section 18A(2) of the SCST Act, a bar has been imposed whereby provisions of Section 438 Cr.PC will not apply to cases under the SCST Act notwithstanding any judgment, order or direction of any court.

Counsel for the appellant has assailed the impugned order primarily on the ground that there are several judgments of this Court, as well as of the Hon'ble Supreme Court, whereby it is held that bar under Section 18 and 18A will not apply in cases where no prima facie case is made out against the accused. In support counsel refers to **Prathvi Raj Chauhan v Union of India and others (2020) 4 SCC 727/ 2020 AIR (SC) 1036**; and **Lokesh and others v The State of Karnataka and another, Law Finder Doc Id # 1997522**; and submits that the case of the appellant falls within the exceptions carved out vide these judgments and record bears out that no prima facie case is made out against the appellant. It is accordingly submitted that, learned Court below was an error in holding that the appellant's application under Section 438 Cr.PC was not maintainable.

Counsel for the appellant has referred to the facts of the case stating that the incident is alleged to have taken place on 20.9.2022, against which FIR no. 75 was registered on 22.9.2022, only under Sections 354-A and

506 IPC. It is submitted by ld. counsel that in the first instance itself the registration of FIR is delayed by two days. It is stated that offence under Section 3 (1) (r) (W) (ii) of the Act was added subsequently only on 25.9.2022, as an afterthought by concocting a false story on the ground of political rivalry in the village even though no such incident had happened. Even no tenable reasons have been given as to why supplementary statement dated 25.9.2022 by complainant was delayed. It is further stated that the appellant had been admitted to bail by the Investigating Officer for the offence under Section 354-A and 506 IPC and later on offence under Section 3 of the Act was added to make it a non-bailable offence. It is further stated that FIR bears no specific allegation as required under law as to how the appellant is supposed to have humiliated complainant or used ill words against the complainant and it has nowhere been stated what specific caste name of the complainant was used by Appellant to insult her.

Notice of motion.

On advance notice, counsel for the State appears and accepts notice. At this stage, Mr. KK Sehgal, counsel for the complainant also puts in appearance and files his Vakalatnama, which is taken on record.

Counsel for the respondent-complainant states that humiliation was meted out by the appellant to the complainant on GT road in full public view. It is further stated that son of the appellant Harinder Singh @ Happy made obscene gestures to the complainant. As such, offence u/s 3(1)(r) (W)(ii) of the SCST Act is made out. It is further stated by the counsel for the

complainant that son of the complainant had earlier registered an FIR No. 96 of 2021 at PS Patara under Sections 323/341 IPC against the appellant and it is with a view to settle the said FIR that the appellant has been pressurising the complainant. It is alleged that the police is hand-in-glove with the appellant.

In rebuttal counsel for the appellant states that the incident is alleged to have happened on 20.9.2022 at 8.15 a.m. in the morning, therefore, it is highly unlikely that there would be any person let alone crowd or public at the place of occurrence at that early hour. As regards FIR No.96 of 2021 referred to by counsel for the complainant, counsel for the appellant clarifies that the said case is pending before the JMIC, Jalandhar, and the Investigating Officer has made a statement therein before the JMIC, Jalandhar that injury has been caused to the son of the complainant by unknown person and not by the appellant or her son Harnek Singh.

Learned State counsel denies that the police is hand-in-glove with the appellant and states that registration of the FIR and the subsequent supplementary statement belies this allegation of the counsel for the complainant.

Heard ld. counsel for the parties.

In **Prathvi Raj Chauhan (supra)**, a three-Judge Bench of the Hon'ble Supreme Court was pleased to read down S. 18, and hold as follows:

“Concerning the applicability of provisions of Section 438 CRPC, it shall not apply to the cases under Act of

1989. However, if a 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.” (Emphasis supplied)

In para 31 thereof, it is further held as follows:

“31. As far as the provision of Section 18A and anticipatory bail is concerned, the judgment of Mishra, J, has stated that in cases where no prima facie materials exist warranting arrest in a complaint, the Court has the inherent power to direct a pre-arrest bail.”

In my view a perusal of the facts, record, and submissions aforementioned do not make out a prima facie case against the appellant for the reasons recorded hereinbelow. It is not in dispute that the alleged incident is of 20.9.2022; and the FIR u/SS 354A and 506 IPC was registered after a delay of 2 days on 22.9.2022. A perusal of the record shows that no explanation, much less a convincing explanation, has been given by the complainant to show as to what caused this delay. It is a well-established position in law that delay in registration of FIR prejudices the case, as it gives rise to suspicion of subsequent deliberation.

Further, the offence u/s 3(r) (W) (ii) of the SCST Act was only added after five days of the alleged incident, on 25.9.2022, by way of a

supplementary statement made by the complainant. No tenable or convincing reasons have been given explaining this delay. As regards allegations of obscene gestures against Harminder Singh, son of the appellant, the fact is that in these proceedings it is not Harminder Singh who is before this Court; and these are facts which will be ascertained during the course of investigation and trial. Additionally, record shows that the appellant is the Sarpanch of the village. These facts lend credence to the contention of the counsel for the appellant that offence under Section 3 of the SCST Act has been added as an malintent afterthought due to political rivalry in the village.

In ‘**Dr. Subhash Kashinath Mahajan versus the State of Maharashtra and another**’ (2018) 6 SCC 454, the Hon’ble Supreme Court inter-alia, held as follows :

“83. Our conclusions are as follows:

(i) proceedings in the present case are clear abuse of process of court under quashed.

(ii) There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out *or where on judicial scrutiny the complaint is found to be prima facie malafide*. We approve the view taken and approach of the Gujarat High Court and Pankaj D Sutar (supra), and Dr NT Desai (supra) and clarify the judgements

of this Court in Bhalotia (supra) and Manju Devi (supra). ...” (emphasis supplied)

Moreover, a perusal of the FIR dated 22.9.2022 and even the supplementary statement dated 25.9.2022 shows that it has nowhere been specifically alleged therein that the appellant was aware of the caste of the complainant. As such, the key ingredient of ‘knowledge’, on the part of the appellant that the complainant is a Scheduled Caste, which is a pre-requisite and necessary to attract Section 18 of the Act, is missing in the present case.

It would be helpful at this point to refer to the supplementary statement dated 25.9.2022 of the complainant whereby offence u/s 3 of the SCST Act was added. Relevant part of supplementary statement dated 25.9.2022 is reproduced below:

“Stated that I am resident of above-mentioned address and belongs to Scheduled Caste. That on 22.9.2022 the statement which was recorded by me to you and in this regard case no.75 dated 22.9.2022 under Section 354-A, 506 IPC, PS Patara has been registered. That they are resident of my village and know about my caste intentionally to lower my estimation and to hurt my feelings hurled abuses to me and done obscene acts and due to this personally and publicly I have to face insult. That due to of not good health of mine earlier I could not record my correct statement. Today I have good health I along with my husband came

present and recorded my statement so under the relevant provisions of law legal action be taken against them. Statement is recorded which is correct.”

A perusal of the above statement shows that vague and general assertions have been made therein. The above statement contains no specific allegation against the appellant as required under law, specifying what exact words were used by the appellant to humiliate and insult the complainant. It has nowhere been stated what specific caste name was used by Appellant to insult the complainant. Moreover, allegation u/s 3 of the Act was made only after 5 days, which raises doubt regarding the veracity or truthfulness of the allegation. In view of these legal lacunae it is clear that no case is made out for the applicability of bar available u/s 18 of the Act of 1989, and the Id. Court below was in error in holding that the appellant’s application u/s 438 of the Code was not maintainable.

Further perusal of the supplementary statement shows that the only reason given by the complainant for delay in making said statement is “*due to of not good health of mine*” on the day FIR was registered. However, no details regarding what malady ailed the complainant on that day, or what treatment she underwent are available, which raises doubt regarding the truthfulness of the allegation. It is but trite to suggest that if the complainant could make the statement on basis of which FIR u/s 354A and 506 IPC was registered, what forbade her from including allegations under the SCST Act at that time itself.

Clearly, inclusion of offence under Section 3 after five days is an afterthought, which casts a dubious cloud regarding the veracity of the same.

In **Lokesh and others (supra)** relied upon by the counsel for the appellant, Karnataka High Court has held that “*Single Judge has jurisdiction to entertain and decide an appeal under sub-Section (2) of Section 14-a of the SC and ST Act. High Court can consider the question of grant of pre-arrest bail only if the complaint does not make out a prima facie case for the applicability of the provisions of the SC and ST Act.*”

In my view, a sum total of all the above facts goes to establish that no prima facie case is made out against the appellant.

As such, keeping in view the aforestated legal position, as also the facts and circumstances noted above, this Appeal is allowed, the impugned order dated 30.9.2022 dismissing the appellant’s application for anticipatory bail, is hereby set aside and the application for anticipatory bail is allowed.

It is accordingly, directed that in the event of arrest or when the appellant surrenders before Court, the appellant shall be released on bail on her furnishing bail/ surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate, subject to the following conditions as envisaged under Section 438(2) Cr.PC:

1. the appellant shall make herself available for interrogation
by a police officer as and when required;
2. the appellant shall not, directly or indirectly, make any
inducement, threat or promise to any person acquainted

with the facts of the case so as to dissuade him from
disclosing such facts to the Court or to any police officer;

3. the appellant shall not leave India without the previous
permission of the Court;

Accordingly, this Appeal is allowed in aforesaid terms. All pending
applications, if any, stand disposed of.

However, nothing stated above shall be construed as a final
expression or 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.

(Nidhi Gupta)
Judge

07/10/2022
Joshi

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