

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-S-2177-2022

Date of decision : 30.11.2022

Gurwinder Singh

... Appellant

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Arjun Veer Sharma, Advocate
for the appellant.

Mr.Tarun Aggarwal, Sr.DAG, Punjab.

Mr.Jaswinder Singh Rana, Advocate for
Mr. Deepak Arora, Advocate
for respondent no.2.

VIKAS BAHL, J.(ORAL)

Challenge in the present appeal is to the order dated 28.09.2022 passed by the Additional Sessions Judge, Barnala whereby prayer for grant of anticipatory bail to the appellant in FIR no.65 dated 18.09.2022 registered under Section 3(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 at Police Station Sehna, District Barnala, has been dismissed.

On 31.10.2022, this Court was pleased to pass the following order:-

“Inter alia, contends that in the present case, it has not been alleged in the FIR that the present appellant was aware of the fact that the complainant belongs to the scheduled caste. It is further contended that although in the complaint it has been alleged by the complainant that the offensive message was sent on the whatsapp number of the complainant, whereas, in the

investigation, it has been come out that the message had been sent on a whatsapp group and was not sent to the individual mobile number of the complainant. It is also contended that the message does not have any reference to any specific person. 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 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. Learned counsel for the appellant has also submitted that in the present case, there is no certificate under Section 65(B) of the Indian Evidence Act, 1872, to authenticate the message sent and for the said fact, reliance has been placed on upon a judgment of this Court in "Rakesh Kumar Singla Vs. Union of India", reported as 2021(1) R.C.R. (Criminal) 704.

Notice of motion for 30.11.2022.

In the meantime, in the event of arrest, the appellant shall be released on interim bail subject to his furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer. However, 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) Cr.P.C.

October 31, 2022 "

Learned counsel for the appellant has submitted that in pursuance of the said order, the appellant has joined the investigation.

Learned State counsel, on instructions of ASI Sarabjit Singh, has submitted that the appellant has joined investigation and is not required for further investigation.

Keeping in view the above said facts and circumstances

moreso, the facts which have been noticed in the order dated 31.10.2022,

and also the fact that the appellant has joined the investigation and is not required for further investigation, the present appeal is allowed and the interim order dated 31.10.2022 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 appeal.

(VIKAS BAHL)
JUDGE

November 30, 2022
Davinder Kumar

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