

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

CRA-S-2593-2022

Date of decision : 12.12.2022

Sonu

.....Appellant

versus

The State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Vikas P. Singh, Advocate
for the appellant.

RAJESH BHARDWAJ, J.

This appeal has been filed under Section 14-A of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities Act), 1989 for setting aside the impugned order dated 19.11.2022 vide which the bail application of the appellant in FIR No.175 dated 19.08.2022, under Sections 147, 149, 323, 342, 379, 354-A, 500, 506 of IPC and Sections 3(1)x, 1(1)xi, 3(2) va of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, at Police Station Behal has been dismissed.

Adumbrated facts of the case are that the complaint was lodged for registration of the FIR for taking action against accused Sonu i.e. petitioner and 20-30 other persons. The complainant alleged that she belongs to Scheduled Castes community. On 14.08.2022 at 04:00 PM her son Sonu and Bunty went to the temple for offering prayers, however, they were restrained by accused Sonu from entering the temple as they belong to the Scheduled Caste. A scuffle took place and there gathered many miscreants who confined the son of the complainant and another boy outside the temple. Both were given beatings by the accused.

Thereafter, parents of the complainant reached the temple and tried to pacify the accused persons. The police was also called, however, police in connivance with the accused persons, amicably resolved the dispute and got their signatures on the blank papers. In the evening, video of the incident got viral on social media. The complainant felt humiliated. It was alleged that the temple is equipped with CCTV cameras and the occurrence was captured in the same. The accused persons extended threats to the complainant that they would be killed in case they disclose anything regarding the incident to anyone. The request was made to take legal action against the accused persons. On the basis of the complaint, formal FIR was lodged and investigation commenced. Apprehending his arrest, the appellant approached the Court of learned Additional Sessions Judge, Bhiwani praying for grant of anticipatory bail. However, learned Additional Sessions Judge after hearing counsel for both the sides, declined the same vide impugned order dated 19.11.2022. Aggrieved by the same, petitioner is before this Court by way of filing the present appeal.

It has been vehemently contended by counsel for the petitioner that the petitioner has been falsely and frivolously implicated by the complainant in this case. He submits that the petitioner has committed no offence. He submits that the alleged occurrence has taken place on 14.08.2022 whereas, the FIR has been registered on 19.08.2022 i.e. after an unexplained delay of 05 days. He further alleged that the matter was duly compromised and the FIR has been lodged only after due deliberations. He has submitted that no *prima facie* case is made out against the appellant and hence, bar under Section 18 of the Atrocities

Act would not be attracted in this case. He submits that the appellant has no criminal antecedents and thus, he deserves to be granted anticipatory bail.

I have heard learned counsel for the appellant and perused the record.

Admittedly, the appellant belongs to higher caste whereas, the complainant belongs to the Scheduled Caste community. There are specific allegations levelled by the complainant against the appellant that they restrained the victims from entering the temple. Though the victims tried to convince the appellant but it was of no use. Thereafter, as per the allegations, both the victims were beaten and they were illegally confined. The police was to be called at the place of occurrence and it was the police who allegedly got the dispute compromised between both the parties. From the allegations made in the FIR, it is apparent that the incident had taken place in the presence of many people. Hon'ble the Supreme Court in the judgment titled as **Prathvi Raj Chauhan Vs. UOI and others, (2020) 4 SCC 727** has laid down one of the condition that in case the complainant fails to make out a *prima facie* case against the accused, then the bar under Section 18 of the Atrocities Act would not be attracted. However, learned counsel for the petitioner has failed to convince this Court that no *prima facie* case is made out against the petitioner.

For the consideration of anticipatory bail, the statutory parameters are given under Section 438(1) Cr.P.C. which reads as under:-

*“Direction for grant of bail to person apprehending arrest:-
(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of*

Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

(vi) the nature and gravity of the accusation;

(vii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(viii) the possibility of the applicant to flee from justice; and

(ix) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

Either reject the application forthwith or issue an interim order for the grant of anticipatory bail.”

As per the law settled by the Hon'ble Supreme Court, in Gurbaksh Singh Sibbia Vs. State of Punjab, AIR 1980 SC 1632, while granting anticipatory bail, the Court is to maintain a balance between the individual liberty and the interest of society. However, the interest of the society would also prevail upon the right of personal liberty. The relevant part of the judgment is as follows:-

31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the

proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in State v. Captain Jagjit Singh (1962) 3 SCR 622, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

The Hon'ble Supreme Court in State Vs. Anil Sharma, (1997)

7SCC 187, held as under:-

6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful

informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.

In view of the overall facts and circumstances of the case, this Court finds no infirmity in the view taken by the learned Court below. Resultantly, the present appeal, being devoid of any merits, is hereby dismissed. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

12.12.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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