

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

209+3

CRA-S-180-2023

Date of Decision: 10.05.2023

Sandeep and Another

...Appellants

Versus

State of Haryana and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Aditya Sanghi, Advocate with
Mr. Saurabh Sharma, Advocate for the appellants

Ms. Dimple Jain, AAG, Haryana

Mr. Rakesh Nehra, Senior Advocate with
Mr. Sauhard Singh, Advocate for respondent No.2

JAGMOHAN BANSAL, J. (ORAL)

1. On 18.01.2023, the following order was passed:-

“The appellants have filed the present appeal for setting aside order dated 10.01.2023 passed by learned Additional Sessions Judge, Rohtak whereby application filed by the petitioner under Section 438 of the Cr.P.C. for grant of anticipatory bail in case FIR No.424 dated 06.10.2022 registered under Sections 323, 379-A, 380, 506 and 34 of the Indian Penal Code, 1860 and Section 3(1)(s) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 at Police Station IMT, Rohtak, was dismissed.

Learned counsel for the appellants has submitted that it is a case there has been an abuse of the provisions of the SC/ST Act. He submitted that when an application for anticipatory bail was filed before the learned Additional Sessions Judge, the same has been dismissed on the ground of maintainability under Section 18 and 18-A of the SC/ST Act. Learned Addl. Sessions Judge

failed to even consider as to whether prima facie case was made out or not. Learned counsel has further referred to a judgment of the Supreme Court in Prathvi Raj Vs. Union of India and others 2020 AIR SC 1036, to contend that when the accused is able to show prima facie there has been an abuse to the process of law by invoking the provisions of SC/ST Act then the bar under Section 18 and 18-A would not apply and he further submitted that perusal of the impugned order which has been passed by the learned Addl. Sessions Judge would show that the learned Addl. Sessions Judge has not even considered the grounds taken by the appellant in this regard.

He further submitted that the present FIR was lodged after gap of two years from the date of alleged incident. He further submitted that the present FIR was in fact a counter blast to the FIR No.423 dated 06.10.2022 registered under Section 294, 354-A, 506, 354-D IPC which was lodged by co-accused Sarita Deswal. The arrest of co-accused Srita Deswal has already been stayed by the Coordinate Bench of this Court vide order dated 30.11.2022.

Notice of motion.

On the asking of the Court, Mr. Munish Sharma, Asstt. A.G., Haryana, who is present in the Court, accepts notice on behalf of the respondent-State and seeks time to complete his instructions.

Adjourned to 07.03.2023.

To be heard with CRA-S-2491-2022.

In the meanwhile, the appellants are directed to join the investigation and appear before the

Investigating Officer within 10 days from today and on their doing so, the appellants shall be released on interim anticipatory bail subject to their furnishing personal/surety bonds to the satisfaction of the Arresting/Investigating Officer. The appellants shall also abide by the conditions as specified under Section 438(2) of the Cr.P.C.”

2. Learned State counsel submits that appellants have joined investigation and no custodial interrogation is required. She further submits that appellant No.2 i.e. Rita Devi has been found innocent.

3. In view of above facts and circumstances, the appeal is allowed and the interim bail granted to the appellants vide order dated 18.01.2023 is made absolute subject to the conditions envisaged under Section 438(2) of Cr.P.C.

4. If the appellants or their family members/associates make any attempt to threat/intimidate the witnesses in the present case, the State would be at liberty to move an application for cancellation of bail granted by this order.

5. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and Trial Court shall proceed without being prejudiced by observations of this Court.

(JAGMOHAN BANSAL)
JUDGE

10.05.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>