

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date Reserved:- 25.04.2023

Date of Pronouncement:- 02.05.2023

1. CRA-S-374-2020

Raj Kumar & others ...Appellants

vs.

State of Haryana & others ...Respondents

2. CRA-S-416-2020

Ram Karan & others ...Appellants

vs.

State of Haryana & others ...Respondents

3. CRA-S-418-2020

Baldev Chand Nambardar & others ...Appellants

vs.

State of Haryana & others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. R.K. Moudgil, Advocate,
for the appellant(s).

Mr. R.K. Ambavta, AAG, Haryana,
for respondent-State.

Mr. Sagar Aggarwal, Advocate,
for respondents No.2 to 6 (in CRA-S-374-2020),
for respondents No.2 and 3 (in CRA-S-416-2020) and
for respondents No.2 to 10 (in CRA-S-418-2020).

HARKESH MANUJA, J.

This order of mine shall dispose of the above 3 appeals
filed under Section 14-A of Scheduled Castes and Scheduled Tribes
(Prevention of Atrocities) Act, 1989 read with Section 439(2) Cr.P.C.
for setting aside/cancellation of impugned orders dated 26.11.2019,

Judge (Exclusive Court), Kurukshetra, vide which pre-arrest bail has been granted to accused persons/ private respondents in FIR No. 143 dated 22.08.2019 registered under Sections 149, 506 of IPC & 3(1) (t) , 3(1)(zc) of SC and ST Act at Police Station Babain, District Kurukshetra.

2. As factual matrix and application of law in all these cases is similar as they all arise from FIR No. 143 dated 22.08.2019, they are being discussed together. For the sake of convenience facts are being taken from CRA-S-374-2020.

3. Briefly stated the facts of the case are that complainants/ appellants got recorded the FIR with the allegations that they belong to scheduled caste community and are in possession of 11 marlas of land since the time of their ancestors; on 05.04.2019, they installed the statue of Baba Sant Ravidass and flag of Dr. Bhim Rao Ambedkar with customary rituals; since then the religious ceremonies were performed from time to time but the accused, who do not belong to scheduled caste were having an evil eye on the said land and they wanted to forcibly usurp the same; in order to grab the same forcibly land and to injure the sentiments of appellants, they threw away the flag and attempted to occupy the said land. Therefore, an application was moved by the appellants to SHO, Police Station, Babainm but the accused in order to save themselves from legal action, compromised and the statue of Sant Ravidass and flag of Dr. Bhim Rao Ambedkar were re-installed. Thereafter, appellants filed a civil suit against the accused. On 10.05.2019, learned trial court ordered to maintain the status quo and thereafter, on 26.5.2019, the accused persons again uprooted the flag of Dr. Bhim Rao Ambedkar and as such, another

application was moved to SHO, Police Station Babain but he did not take any action against the accused persons; and that on 21.7.2019, the accused persons after hatching a conspiracy, stole the flag and as such, an application was again moved to the police, but all efforts proved futile and that the accused persons boycotted the complainant and their community and stopped them from going into their fields. Copy of complaint in this regard was sent to CM window and in pursuance of which FIR No. 143 dated 22.08.2019 under Sections 149, 506 of IPC & 3(1) (t) , 3(1) (zc) of SC and ST Act was registered at Police Station Babain, District Kurukshetra.

4. Three separate pre-arrest bail applications were filed on behalf of all the accused persons/ private respondents, which were allowed by learned Additional Sessions Judge (Exclusive Court), Kurukshetra vide impugned orders dated 26.11.2019, 07.01.2020 & 14.12.2019 respectively.

5. Present appeals have been filed impugning these orders.

6. Learned counsel for appellants contends that impugned orders are liable to be set aside as the Ld. Lower court completely lost sight of the fact that in view of Section 18 and 18-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and as settled in judgment of Hon'ble Apex Court in "**Prathvi Raj Chauhan v. Union of India**" reported as 2020 SCC Online SC 159, accused could be granted anticipatory bail only in case no prima facie case is made under Atrocities Act and even otherwise Section 438 of Cr.P.C., 1973 has no applicability to cases under SC and ST Act. He further submits that from the facts of the case as narrated in the complaint, accused persons/ private respondents in past have

removed the religious symbol (Nishan Sahib) from the land in dispute and this time also they uprooted the flags of Dr. Bhim Rao Ambedkar and therefore, it is amply clear that offences under the SC and ST act are made out and in that circumstance, bail should not have been granted to the accused persons by the court below. Learned counsel for appellants also places reliance upon the order dated 27.05.2019 passed by Ld. Civil Judge in civil suit no. 606/2019 filed by the appellants for restraining the respondents from interfering in their possession in khasra no. 382(0-11), wherein Ld. Civil Judge granted interim injunction in their favour and restrained the private respondents from causing any interference in the peaceful possession of the appellants. Ld. Counsel submits that despite the injunction granted by the civil court, respondents have not mend their way and again in connivance with each other stolen the Nishan Sahab and threatened the appellants.

7. On the other hand, learned counsel for the private respondents contends that even from the content of the FIR, it is apparent that the incident on the night of 21.07.2019 was not seen by anyone and it is only the presumption of appellants that the act as alleged in the FIR has been committed by the accused persons/ private respondents and in these circumstances, it cannot be said that a prima facie case is made out against the accused persons/ private respondents and the learned Court has thus, rightly granted them the benefit of pre-arrest bail.

8. I have heard learned counsel for the parties and gone through the paper book. I do not find much substance in the argument raised by the learned counsel for the appellants. Para 7 of the

complaint filed by the appellants before the CM window is reproduced below:

“7. That in the night of 21.07.2019, accused in collusion and connivance with each other stolen the Nishan Sahab from the above mentioned land which came into the knowledge of the applicants today morning and then immediately applicants filed application to the SHO, Babain but the SHO has not given any assurance regarding taking of action against the accused.”

9. Perusal of the above para reveals that the actions as alleged in the complaint filed by the appellants were not seen by anybody and facts regarding the night of 21.07.2019 came into their knowledge in the morning only. Therefore, it appears that it was only on the basis of past incidents that the complaint was made against the accused persons. However, at the same time, this is also an admitted fact that past incident stood compromised between appellants and the accused persons, therefore allegation u/s 3(1)(t) of SC/ST Act cannot be said to be prima facie established against the accused persons/private respondents at this stage.

10. With respect to 3(1)(zc) of SC/ST Act, there is a categorical finding by the Special Court that the investigating officer present in the court has pointed out that the allegations of social boycott by the accused persons/private respondents are still under investigation and he has not found any specific evidence in this regard, therefore, Ld. Special Court found that the applicability of the provisions of SC/ST Act is also debatable at this stage. In view of these observations, offences under Section 3(1)(zc) of the SC/ST Act cannot also said to be made out in the absence of any evidence in this regard.

11. There is another angle also present in the facts of this case as learned counsel for appellants placed reliance upon the order dated 27.05.2019 passed by Ld. Civil Judge and operative part of which is reproduced here under:

"9. In view of the above discussion, at this stage, the plaintiffs/applicants have shown a better prima-facie case than the defendants. It appears that the grant of stay in favour of the plaintiff is warranted under the facts and circumstances of the present case since the balance of convenience lies in their favour qua the possession of the suit land. However, the applicants/plaintiffs have not been able to show that they have a right to raise the said Nishansohib on the suit land. The said land is mentioned as Chahi Land in the jamabandi, which suggest that it to be used for cultivation. As such, raising construction on the same and using it for a particular religious/charitable/ or any other purpose would mean the changing the nature of the suit land for which the applicants/plaintiffs have not been able to show prima-facie entitlement. As a result, ad-interim injunction is granted in favour of the plaintiff restraining the defendants from causing any interference in the peaceful possession of the plaintiffs over the suit land. However, in the considered opinion of the Court, no ground exists for grant of ad-interim injunction regarding construction of any religious/charitable symbol on the suit land. As such the application under Order 39 Rule 1 & 2 is partly allowed."

12. A perusal of abovesaid order shows that injunction was granted in favour of the appellants, but at the same time, appellants were also restrained from carrying out any other activity apart from cultivation on the disputed land including the construction of any religious / charitable symbol on the suit land. If the facts as alleged in the complaint are believed to be true, appellants were themselves acting in violation of the directions issued by the learned Civil Judge and therefore, on this count as well, the case as propounded by the appellants does not find favour with this Court.

13 In view of the discussion made herein above, this Court is of the view that Ld. Trial Court/ Special Court has rightly granted the concession of pre-arrest bail to the accused persons/ private respondents vide orders dated 26.11.2019, 07.01.2020 & 14.12.2019 respectively and no interference is warranted in the orders so passed by Ld. Trial Court / Special Court. Accordingly, the present appeals are dismissed.

14. Pending miscellaneous application(s), if any, shall also stand disposed of.

02.05.2023
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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned :
Whether reportable

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Yes/No
Yes/No