

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

220-B

CRA-S-859-2022

Date of Decision: 04.01.2023

Harpreet Singh @ Happy

.... Appellant

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. S.S. Gill, Advocate for the appellant.

Mr. G.S. Sandhu, Deputy Advocate General, Punjab.

ASHOK KUMAR VERMA, J. (ORAL)

The appellant, namely, Harpreet Singh @ Happy, has filed the present appeal against the impugned order dated 21.04.2022 passed by the learned Additional Sessions Judge, Amritsar, whereby the application filed by the appellant for grant of anticipatory bail in case FIR No. 79 dated 22.06.2021 registered under Sections 302, 323, 324, 427, 148 and 149 IPC read with Section Section 3 of the the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short-'the SC & ST Act') at Police Station Sultanwind, District Amritsar, was dismissed.

As per prosecution story, the present FIR was registered against the appellant, on the basis of statement made by Hira Singh who stated that on 21.06.2021 at about 10.30, he along with his brother Avtar Singh Gill, Gautam S/o Shashi Kumar, Diwan Singh @ Sonu, Shankar and Mandeep Singh were going from Taran Wala Pull to Kot Mit Singh

on Bolero bearing registration No. PB-23-R-7759, white colour being driven by Shankar, aforesaid. When they reached ahead of chowk Peeran Di Dargah, then another Bolero without number came from the front side. The driver of the said Bolero stopped the vehicle in front of their vehicle. Thereafter, Antar Kahlon armed with baseball, Happy armed with rod, Jaskaran Bhollu armed with Datar, Ghulla, Gursimran Singh @ Gopi and Jagroop Bambara armed with dangs and sticks alighted from the vehicle and one Bullet motorcycle. Antar Kahlon raised '*lalkara*' by abusing the complainant party in the name of their caste and the assailants with their respective weapons attacked upon the head of Avtar Singh Gill-brother of the complainant Hira Singh, as a result of which, Avtar Singh Gill, fell on the ground. The assailants caused injuries on the person of Avtar Singh Gill with the respective weapons and fled away from the spot. While leaving the spot, they also damaged the vehicle of the complainant party. They all got admitted in Civil Hospital, Amritsar, where the doctor declared Avtar Singh brought dead.

Learned counsel for the appellant, *inter alia*, contends that appellant has falsely been implicated in the instant case. The prosecution had examined the complainant-Hira Singh as PW-1, alleged eye-witness-Shanker as PW-2, injured-Mandeep Singh as PW-3 and mother of complainant and deceased (Avtar Singh Gill)-Amarjit Kaur as PW-4, but all of them were declared hostile as they have not supported the prosecution version. Copies of statements of PW-1 to PW-4 are annexed with the appeal as Annexures A-1 to A-4. More so, 5 co-accused of the

appellant, namely; Harmandeep Singh, Anterpreet Singh, Gursimaranjit Singh @ Gopi, Jashanpreet Singh Bablu and Bimalpreet Singh, have already been acquitted by the trial Court vide judgment of acquittal dated 27.05.2022, passed by the learned Additional Sessions Judge, Fast Track Special Court, Amritsar, on the basis of statements of PW-1 to P-4. There are only general and vague allegations against the appellant and no specific role has been attributed to him. No offence under the SC & ST Act, is made out. Learned counsel for the appellants has further submitted that the present case is an abuse of the process of law. The appellant is ready and willing to join the investigation as and when called by the Investigating agency and shall abide by any condition which may be imposed by this Court. In support of his contentions, learned counsel for the appellant has relied upon a judgment of this Court in ***Sudo Mandal @ Diwarak Mandal vs. State of Punjab, 2011(2) RCR (Criminal) 453.***

On the other hand, learned counsel for State vehemently opposed the submissions made by learned counsel for the appellants. He contends that Section 18 of the Act create a specific bar in the grant of anticipatory bail under Section 438 Cr.P.C. In support of his contentions, learned counsel for the State has relied upon a judgment of Hon'ble the Supreme Court in ***Prathvi Raj Chauhan vs. Union of India and others, 2020 (4) SCC 727.***

I have heard learned counsel for the parties and carefully gone through the relevant record.

Perusal of the file shows that the present case has been registered against the appellant and his co-accused on the basis of statement of complainant-Hira Singh, on the allegations that on 21.06.2021 at about 10.30, the appellant along with his co-accused attacked upon the complainant party and caused injuries to the complainant, his brother Avtar Singh Gill and one Mandeep Singh. The brother of the complainant, namely, Avtar Singh Gill, had succumbed to the injuries. However, while appearing in the witness box, complainant-Hira Singh as PW-1, alleged eye-witness-Shanker as PW-2, injured-Mandeep Singh as PW-3 and mother of complainant and deceased (Avtar Singh Gill)-Amarjit Kaur as PW-4, have turned hostile as they have not supported the prosecution version, as a result thereof, 5 co-accused of the appellant, namely; Harmandeep Singh, Anterpreet Singh, Gursimaranjit Singh @ Gopi, Jashanpreet Singh Bablu and Bimalpreet Singh, have already been acquitted by the trial Court vide judgment of acquittal dated 27.05.2022, passed by the learned Additional Sessions Judge, Fast Track Special Court, Amritsar.

In view of the discussion made above, the present appeal is allowed. The appellant-Harpreet Singh @ Happy, is directed to join investigation within 15 days from today and in the event of his arrest, he shall be released on bail subject to furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer. 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) of the Cr.P.C.

It is made clear, in case the appellant fails to join the investigation, then the State shall be at liberty to move an application for cancellation of the present anticipatory bail granted to him.

Any observation made here-in-above is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

January 04, 2023
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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No