

**CRA-S-1811-2023 (O&M)**

**2023:PHHC:093854**

**239 (2 cases)**

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

**Date of decision: July 19, 2023**

**1) CRA-S-1811-2023 (O&M)**

Ashish

....Appellant

Versus

State of Haryana

....Respondent

**2) CRA-S-1784-2023 (O&M)**

Ashu

....Appellant

Versus

State of Haryana

....Respondent

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

Present:- Mr. Sushil Jain, Advocate  
for the appellant(s)

Mr. Karan Garg, A.A.G., Haryana.

Mr. Lajpat Rai Sharma, Advocate  
for the complainant.

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**ARUN MONGA, J. (ORAL)**

**CRM-29215-2023 in CRA-S-1811-2023**

For the reasons stated in application, same is allowed subject to all just exceptions. Document (Annexure A-1) is taken on record.

**CRA-S-1811-2023 & CRA-S-1784-2023**

CRA-S-1811-2023 has been filed under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as '*Act of 1989*') against impugned order dated 15.06.2023,

passed by Ld. Additional Sessions Judge, Sonipat, whereby the application filed by appellant Ashish for grant of regular bail was dismissed.

2. Likewise, appellant Ashu has filed appeal bearing CRA-S-1784-2023 under Section 14-A of the Act of 1989 against same impugned order dated 15.06.2023, dismissing his regular bail petition.

3. Vide this common, above-mentioned two appeals are being disposed of, since the controversy and facts arise out of same FIR. For brevity, recitals are being taken from CRA-S-1811-2023.

4. FIR No.65 dated 09.03.2023, was initially registered under Sections 307, 323, 506, 148 read with Section 149 IPC and Sections 3(1)(r), 3(1)(s), 3(2)(v) and 3(2)(v)(a) of the Act, 1989 (Amendment 2015), at Police Station Civil Lines, Sonipat, on the statement of complainant Anil Kumar. Later on, Section 307 IPC was deleted, but Section 308 IPC was instead added .

4.1. According to the prosecution's account, Anil Kumar filed a complaint along with MLR (Medico-Legal Report) of Smt. Shanti. He stated that he is an auto-rickshaw driver and lived with his parents and brother, Mukesh Kumar, belonging to a scheduled caste community. In their neighborhood, other residents named Naresh, an Advocate, and his son Akshay, also live and are allegedly involved in criminal activities in the State of Maharashtra. On the ill-fated day of 08.03.2023, Akshay, along with Ashu (the appellant in CRA-S-1784-2023), Tannu, Kallu, and Naresh, were present near Anil Kumar's house. As soon as Anil parked his motorcycle in front of his house, Akshay attacked him with a wooden stick, but Anil managed to shut the door and protected himself. However, Akshay and his family members began hurling bricks at them from the roof of their house, resulting in injuries to Smt. Shanti Devi and his father on their feet. Ashu inflicted injuries on Anil's back, while Tannu struck a brick-bat blow on his mother's head. In a deliberate attempt to cause harm, Naresh attacked his sister and Sudesh with a brick-

bat intending to cause fatal injuries. As a result, Anil's mother suffered severe injuries. Moreover, they threatened Anil and his family, using derogatory caste slur, and Naresh also boasted about his influence as an Advocate.

5. Learned counsel for the appellants submits that the appellants have been falsely implicated in the present case. He further submits that neither was appellant Ashish named in FIR nor was he present on the scene of occurrence. There is no allegation against appellant Ashish of having instigated co-accused in any manner to have caused offences, as per the FIR. No overt act has been attributed to him, which resulted either in inflicting injury or having used any words of the kind against the complainant attracting stringent provisions of the Act of 1989. Appellant Ashish is not involved in any other case.

5.1. Learned counsel for the appellants further urge that appellant Ashu has been implicated by complainant just because he is son of Naresh with whom complainant has to settle scores. Whereas, there is no dispute between the complainant and appellant Ashu.

5.2. Learned counsel for the appellants would further canvass that injuries suffered by Smt. Shanti and Lakhmi Chand were simple in nature and Section 308 IPC was wrongly invoked by the investigating agency. Appellant Ashu is in judicial custody since 28.04.2023 while appellant Ashish is in preventive custody since 09.06.2023.

6. On the other hand, learned State counsel as well as learned counsel for complainant state that in fact the presence and active participation of the appellants was videographed. They should not be released on bail in view of the rigors of the Act of 1989. Learned counsel for complainant further points out that appellant Ashu is involved in two other FIRs, one FIR No.102 of 2016 under Section 379 IPC registered at Police Station, GRP, Sonipat and the other FIR No.67 of 2020 under Sections 323, 506 of the IPC, registered at Police Station, Sonipat.

6.1. In rebuttal, learned counsel for appellants submits that appellant Ashu was acquitted in case FIR No.102 of 2016 under Section 379 IPC while he is on bail in the other case.

7. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

8. As is borne out from the CD (Annexure A-1) produced on record by complainant, both the sides seem to be indulging in throwing brick-bats on each other which has resulted into the registration of FIR. It was a case of free fight between the parties.

9. Challan was presented on 21.06.2023 but charges are yet to be framed. There are 28 witnesses in all and trial is unlikely to conclude in near future. Investigation *qua* appellants is thus complete and appellants are not required for custodial interrogation. Appellants are being kept in judicial custody on the unfounded apprehension of tampering with evidence and/or influencing the witnesses.

10. Allegations against appellants are a matter of trial at this stage. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, appellant-Ashu has been in judicial custody for more than 2½ months now, being under incarceration since 28.04.2023 and appellant-Ashish is in jail for the past more than 1 month in preventive custody, being behind bars since 09.06.2023. There is no likelihood of appellants fleeing from justice. Both the appellants are not a threat to society in any way.

11. Considering the overall scenario and without commenting on the merits of the case, the instant appeals are allowed. I am of the view that no useful purpose would be served to keep the appellants in further preventive custody.

12. Accordingly, the impugned orders are set aside and both appellants are ordered to be released on bail, if not required in any other case, on their furnishing bail bonds and surety bonds to the satisfaction of Ld. trial Court, where

their cases are being tried and in case he/she is not available, before learned Duty Judge, as the case may be.

13. In case, appellants are found to be involved or get involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of their bail in the instant case.

14. It is made clear that any observations and/or submissions noted herein above shall not have any effect on merits of the case as the same are for the limited purpose of hearing the instant appeals alone and learned trial Court shall proceed without being influenced with this order.

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

16. A photocopy of this order be placed on the file of connected case.

**( ARUN MONGA )**  
**JUDGE**

**July 19, 2023**  
*ashish*

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No