

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

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CRM-M-32296-2019
Date of decision : 30.01.2023

State of Haryana

....Petitioner

Versus

Ashok Kumar Aggarwal

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Munish Sharma, Asstt. A.G., Haryana
for the petitioner-State.

Mr. Tanmoy Gupta, Advocate
for the respondent.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioner-State has filed the present petition under Section 439(2) read with Section 482 of the Code of Criminal Procedure, 1973 for cancellation of anticipatory bail granted to the respondent by learned Additional Sessions Judge, Palwal vide order dated 19.12.2018 in case FIR No.54 dated 29.01.2018 registered under Sections 304-A and 34 of the Indian Penal Code, 1860 and Section 3 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC/ST Act') and Section 25 of the M.S. Act at Police Station City, Palwal, District Palwal.

Brief facts of the case are that the above-said FIR was registered on a complaint made by complainants-Renu and Sheela alleging that their husbands Udai Chand and Sher Singh, respectively, were working in SRS Society, Sector-5, Palwal under contract of Ashok Kumar Aggarwal (the respondent) as Sweeper. On 29.01.2018 at about 2:00 p.m., the respondent and other officers of SRS Society asked their

husbands to enter into the sewage hole, whereas both refused to do so as they were engaged as sweeper but both of them entered into the sewage, which resulted into the death of their husbands. The respondent has filed anticipatory bail application under Section 438 of the Cr.P.C. which has been allowed by learned Additional Sessions Judge, Palwal vide order dated 19.12.2018. Aggrieved against the said order, the petitioner-State has filed the present petition.

Learned State counsel argued that the respondent has been granted anticipatory bail by learned Additional Sessions Judge, Palwal without following the mandatory provisions of the SC/ST Act. The husbands of the complainants were died due to negligence of the respondent. There was a supplementary statement dated 08.03.2018 of the complainants-Renu and Sheela recorded under Section 161 of the Cr.P.C. wherein it has been categorically mentioned that the respondent called the deceased persons with derogatory words in regard to the SC/ST Act. After the amendment dated 17.08.2018 in the SC/ST Act, as per Section 18A, Sub-Section 2, the provision of Section 438 of the Cr.P.C. shall not apply to a case registered under the SC/ST Act. Therefore, impugned order dated 19.12.2018 passed by learned Additional Sessions Judge, Palwal may be set aside.

On the other hand, learned counsel for the respondent submits that the respondent has been falsely implicated in the present case. The FIR does not contain ingredients of SC/ST Act. The prima facie case under the SC/ST Act is made out against the respondent. The FIR was registered on 29.01.2018 and Section 18 of the SC/ST Act was amended on 17.08.2018. Therefore, Section 18A, Sub-Section 2 of the

SC/ST Act are not applicable in the present case as the FIR in the present case was registered before the amendment. There is no illegality in the impugned order dated 19.12.2018 passed by learned Additional Sessions Judge, Palwal. Therefore, the present petition may be dismissed.

I have heard learned counsel for the parties and gone through the paper-book.

The respondent has filed anticipatory bail application under Section 438 of the Cr.P.C. which has been allowed by learned Additional Sessions Judge, Palwal observing that offence under Section 304A is bailable and prima facie FIR does not contain the ingredients of the offence under the SC/ST Act.

No doubt, Section 18 of the SC/ST Act created a bar for entertaining applications for anticipatory bail. However, by the judgment in ***Dr. Subhash Kashinath Mahajan Vs. State of Maharashtra and Another : (2018) 6 SCC 454***, it was held that anticipatory bail could be granted if a prima facie case of commission of an offence under the Act is not made out or if it can be shown that the allegations were false. Other directions were also issued by the Court in the afore-stated decision. Subsequently, by the judgment in ***Union of India Vs. State of Maharashtra and Others : (2020) 4 SCC 761*** few of the directions issued in ***Dr. Subhash Kashinath Mahajan's case (supra)*** were reviewed. In the meantime, Section 18A of the SC/ST Act was introduced to overcome the rigour of the aforementioned judgments. The validity of the said amendment was considered by the Supreme Court in the decision in ***Prathvi Raj***

Chauhan Vs. Union of India and Others : (2020) 4 SCC 727. While affirming and reiterating right of an applicant to seek anticipatory bail, despite the bar under sections 18 and 18A of the SC/ST Act, the Supreme Court made certain observations, which are as follows:-

“11. Concerning the applicability of provisions of Section 438 Cr.PC, it shall not apply to the cases under the 1989 Act. However, if the complaint does not make out a prima facie case for applicability of the provisions of the 1989 Act, the bar created by Sections 18 and 18A(i) shall not apply.”

Moreover, in the present case, the FIR was registered on 29.01.2018 and Section 18 of the SC/ST Act was amended on 17.08.2018. Therefore, Section 18A of the SC/ST Act is not applicable in the present case as the FIR in the present case was registered prior to the amendment.

It follows from the above discussion that the impugned order does not suffer from any legal infirmity so as to warrant setting aside of the same.

Accordingly, the present petition, being devoid of any merit, is hereby dismissed.

30.01.2023

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(ASHOK KUMAR VERMA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No