

108 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2162-2023 (O&M)
Decided on : 23.08.2023

Rashpal Singh

..... Appellant

Versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. H.S.Jalal, Advocate
for the appellant.

Manjari Nehru Kaul, J.(Oral)

CRM-34598-2023

Application is allowed as prayed and complainant is directed to
be impleaded as respondent No.2.

Amended memo of parties filed along with the application is
taken on record.

Main case

1. Instant appeal has been filed by the appellant impugning the order dated 04.08.2023 whereby the anticipatory bail in case FIR No.124 dated 26.07.2023 under Section 3(1)(r) of SC/ST (Prevention of Atrocities) Act, 1989 registered at Police Station City Patti, District Tarn Taran has been declined.
2. Learned counsel for the appellant *inter alia* submits that the appellant is completely innocent and has been falsely implicated in the case in

hand as the complainant, who was a Sarpanch, was under a wrong impression that he had been suspended at the behest of the appellant and had also got an administrator appointed in his place. Learned counsel submits that even otherwise, the appellant who was posted as SDO in Sub Division, Patti, had no concern whatsoever with the working of the Sarpanches and Panchs as they were working directly under DDPO & BDPO. Learned counsel further submits that as per the allegations levelled in the FIR, a message had been circulated on Whatsapp group that all those Sarpanches belonging to SC category were to attend a dinner on 14.11.2021 hosted by an MLA at a hotel in Tarn Taran, along with some respectable persons of the village. Learned counsel submits that firstly, no such message was circulated by the appellant and even assuming for the sake of arguments that the said message had indeed been circulated, it could not be termed as offensive much less derogatory so as to attract the mischief of an offence under Section 3(1)(r) of SC/ST Act. It has still further been submitted that the alleged message was circulated on Whatsapp group in November, 2021, however, the FIR in question was lodged as recently as on 26.07.2023, which further indicated that it had been lodged under political pressure. It has been lastly argued that even assuming for the sake of arguments, though not conceded, that any such message had ever been circulated on Whatsapp group by the appellant to various Sarpanches belonging to SC category, it was not circulated in public view rather only the recipient i.e. the complainant was privy to it. In support, learned counsel has placed reliance upon the judgment of Hon'ble Apex

Court in ***Pramod Suryabhan Pawar vs The State Of Maharashtra, 2019(9) SCC 608*** by urging that it had been categorically held therein that the messages sent on Whatsapp group could not be construed to be within public domain.

3. Heard learned counsel for the parties and perused the relevant material on record.

4. As per the allegations levelled in the FIR in question, following message was circulated on Whatsapp group by the appellant, who at the relevant time was posted as SDO, Block Patti:

“All the Panchayat Secretaries are requested that tomorrow evening Hon’ble MLA has invited all the sarpanches for dinner at Seven Star, Tarn Taran. Hotel Seven Star is situated a little ahead of our office. Convey message to all the Sarpanches that they kindly come there, where any Sarpanch is SC, he should take one of his respectable person with him. Convey this message positively, 7.00 PM to 11.00 PM. Seven Star Tarn Taran. Convey message now. Davinder, brother, take numbers of all Sarpanches and convey message on behalf of office, OK.”

5. On a bare reading of the message allegedly circulated on Whatsapp group *prima facie* an offence under Section 3(1)(r) of SC/ST Act is made out against the appellant as it is evident that it is only those Sarpanches belonging to SC/ST category, who were asked to come along with some respectables for the dinner, being hosted by the MLA in a hotel. For Sarpanches belonging to General category, no such directions had been given.

It is *prima facie* evident that a distinction had been made between Sarpanches belonging to the SC/ST category and Sarpanches belonging to the General category. In the FIR in question, it also stands alleged that there is an audio recording of the appellant to the effect that Sarpanches belonging to the SC category would not be permitted to enter the hotel and be served food, in case, they were not accompanied by some respectable persons belonging to the General category “Jatt”.

6. This Court in the light of the allegations levelled in the FIR in question and coupled with the bar created under Section 3(1)(r) of SC/ST Act for extending the concession of anticipatory bail to the appellant/ to an accused, is not inclined to allow the instant appeal. Accordingly, the present appeal stands dismissed.

7. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

23.08.2023
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No