

CRA-S-2596-2023

1

229

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

1. CRA-S-2596-2023
Date of decision : 15.11.2023

MAHESH AND ANOTHER
....Appellants

Versus

STATE OF HARYANA
....Respondent

2. CRA-S-2737-2023
Date of decision : 15.11.2023

RAHUL SINGH
....Appellant

Versus

STATE OF HARYANA
....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Sandeep Kumar Yadav, Advocate
for the appellants.

KULDEEP TIWARI.J.

1. This common order shall dispose of both these appeals, as they arising out of FIR No. 206 dated 21.08.2023, registered under Sections 148, 149, 323, 452, 506 and 34 IPC and Section 3(2)(va) of SC/ST Act, 1989, identical questions

CRA-S-2596-2023

2

of common fact and law are involved therein For the sake of brevity, the facts are being extracted from CRA-S-2596-2023.

2. The present appeals have been filed against the order dated 08.09.2023 passed by the learned Additional Sessions Judge, Narnaul, vide which anticipatory bail of the appellants, in case FIR(supra) have been dismissed. The declining order(supra) caused grievance to the appellants and led them to file the instant appeal. At the time of issuance of notice of motion on dated 15.09.2023, the following order was passed by this Court:-

The present appeal has been filed against the order dated 08.09.2023 passed by the learned Additional Sessions Judge, Narnaul vide which anticipatory bail of the appellants in case FIR No.206 dated 21.08.2023 registered under Sections 148, 149, 323, 452, 506 and 34 IPC and Section 3(2) (va) of SC and ST Act, 1989 has been dismissed.

Learned counsel contends that the allegations of use of caste related remarks were against co-accused Jony son of Hans Raj There is a delay of one day in lodging the FIR. The appellants are alleged to have caused injuries to the complainant, Ankit and Rajesh. Though there is no MLR regarding the complainant but the injuries suffered by Ankit and Rajesh are simple in nature, being bruises. The appellants, who are poor labourers, are married and having minor children. They have been falsely implicated in the case on account of Panchayat elections. They are not involved in any other case and are ready and willing to join the investigation as and when required by the investigating agency and will cooperate.

Notice of motion.

At the asking of the Court, Mr. Jagdish Manchanda Addl. AG, Haryana accepts notice on behalf of respondent-State.

Meanwhile, the appellants are directed to join the investigation on or before 23.09.2023 In the event of their arrest, they shall be released on interim bail to the satisfaction of the Arresting Officer, subject to compliance of conditions. as enshrined under Section 438(2) Cr.P.C.

However, it is clarified that if the appellants do not join and cooperate with the Investigating Agency as required by the Arresting/Investigating Officer, this interim order shall be deemed to have been vacated.

Adjourned to 15.11.2023.

3. Learned counsel for the appellants submits that in compliance of the order(Supra), the appellants have joined the investigation and fully cooperated with the Investigating Officer concerned. He submits that even if the allegations as leveled in the FIR, are taken as a gospel truth, yet the offence punishable under Section 3 of the SC/ST Act are not attracted. He also draws attention of this Court towards the allegations, as leveled by the complainant, that on 20.08.2023, at about 9.15 p.m., the appellants/accused, in a drunken state used caustic remarks against the complainant and thereupon, gave beatings to him. To build up his argument that assumingly even if any caustic remarks were made by the accused, yet since there are no allegations that the same were made in public view, therefore, the same does not attract the provisions of SC/ST Act. He has placed reliance upon the judgment rendered by Hon'ble the Supreme Court of India in case titled as "***Vasant S/o Kerba Shinde & others Vs State of Maharashtra & Another***", reported as ***2021 (4) RCR (Criminal) 401***, wherein, Hon'ble the Supreme Court has held that if *prima facie* the offence punishable under Section 3 of the SC/ST Act, does not attract the relief under Section 438 Cr.P.C. being granted. The relevant observation of the Hon'ble Apex Court rendered in abovesaid judgment (Supra) is extracted here as under:-

"7. The allegations in the FIR do not indicate that the offences punishable under Sections 3(1)(r) and 3(1)(s) were made in public view. Secondly, the documents

placed on record also raise sufficient doubts about the applicability of Section 3(2)(va) of the Act.

8. It was laid down Court in Vilas Pandurang Pawar & Anrv. State of Maharashtra & Ors.(2012) 8 SCC 795 wherein this Court held:

"10. The scope of section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no court shall entertain an application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. The court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence.

9. Further, this Court in Union of India v. State of Maharashtra & Ors., (2020) 4 SCC 761 held:

57. The guidelines in paras 79.3 and 79.4 appear to have been issued in view of the provisions contained in Section 18 of the 1989 Act; whereas adequate safeguards have been provided by a purposive interpretation by this Court in State of M.P. v. Ram Kishna Balothia [State of M.P. v. Ram Kishna Balothia, (1995) 3 SCC 221: 1995 SCC (Cri) 439]. The consistent view of this Court that if prima facie case has not been made out attracting the provisions of the SC/ST Act of 1989 in that case, the bar created under Section 18 on the grant of anticipatory bail is not attracted. Thus, misuse of the provisions of the Act is intended to be taken care of by the decision above. In Kartar Singh [Kartar Singh v. State of Punjab, (1994) 3 SCC 569: 1994 SCC (Cri) 899], a Constitution Bench of this Court has laid down that taking away the said right of anticipatory bail would not amount to a violation of Article 21 of the Constitution of India. Thus, prima facie it appears that in the case of misuse of provisions, adequate safeguards are provided in the decision mentioned above.

10. At the present stage, going by prima facie view in the matter that the offences punishable under Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Act do not get attracted,

we find that case for relief under section 438 of the Code of Criminal Procedure, 1973 is made out.”

4. Today, Sh. Bhupinder Singh DAG, Haryana, learned State counsel on instructions from ASI Kishor, submits that the appellants have joined the investigation and they are not further required.

5. However, on the other hand, Mr. Sanjeev Kumar, has put an appearance on behalf of the complainant, through valid executed *Vakalatnama*, which is taken on record. He further submits that the asked relief, cannot be granted in view of the provisions under Sections of 18, SC/ST Act, 1989 which creates specific bar for invoking Section 438 Cr.P.C. He further submits that there are specific allegations which attract the penal provisions of Section SC/ST Act, 1989, dis-entitling the appellants to claim the relief of anticipatory bail.

6. Considering the nature of the offence as well as the law laid down by Hon'ble the Supreme Court, this Court finds that both the present appeals, deserve to be allowed. First of all, the moot question which arise as for adjudication is that “whether the offence punishable under the SC/ST Act are made out or not”, which needs adjudication by the learned trial court at an appropriate stage. However, prima facie, this court is satisfied that no offence punishable under the SC/ST Act, is not made out. It is also not disputed that the appellants have joined the investigation and duly cooperated with the investigating agency. The learned State counsel made a specific statement on instructions imparted by the Investigating Officer that the custodial interrogation of the appellants/accused is not required and investigation is at a final stage.

CRA-S-2596-2023

7

7. In view of above specific observations and legal prepositions, both the appeals are allowed and the interim order dated 15.09.2023 is hereby made absolute.

(KULDEEP TIWARI)
JUDGE

15.11.2023
monika

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