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

CRM-M-50753-2022
Date of Decision: 25.05.2023

Vikas Malik @ Vikash Malik

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. S.K. Garg Narwana, Senior Advocate assisted by
Mr. Vishal Garg Narwana
Mr. Jagjit Singh Johal, Advocate
for the petitioner.

Mr. Rupinder Singh Jhand, Addl. A.G., Haryana.

HARSH BUNGER, J. (Oral)

Petitioner has filed this petition under Section 438 Cr.P.C. for seeking anticipatory bail in case FIR No.358, dated 30.09.2022, under Sections 365, 379-A, 506 read with Section 34 of the Indian Penal Code, 1860, Section 25 of the Arms Act and Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered at Police Station Sadar Narwana, District Jind.

2. At the outset, Learned State Counsel has raised an objection regarding maintainability of the instant petition before this court by placing reliance upon a judgment rendered by a co-ordinate bench of this court in the case of *Vinod Bindal v. State of Haryana, 2023(1) RCR (Criminal) 392*; wherein it has been held as under:

“21. The principles laid down by all the decisions mentioned above reiterate and point to the explicit intention of the Parliament to exclude the original jurisdiction of the High Court for granting bail. There is also an explicit intention to exclude the jurisdiction of the High Court to grant anticipatory bail. The statute, therefore, in its express stipulation, clearly indicates that a bail application can be filed under the SC/ST Act only before the Special Court or the Exclusive Special Court. The original jurisdiction of the High Court under section 438 of Cr.P.C is therefore, expressly and by necessary intendment completely excluded.

22. Under SC/ST Act, there is special procedure and Special Courts/Exclusive Special Courts for dealing with the cases involved in the offences against the scheduled castes and scheduled tribes. A bare reading of the provisions of Sections 2(d), 2(bd) and Section 14 categorically indicates that the said offences are exclusively triable by Special Courts as contemplated by the legislature.

23. It is further to be kept in mind that under the special provisions of the SC/ST Act, the right of the victim and the witnesses are on a higher pedestal than provided under the Cr.P.C. From the entire scheme of the Act, including the powers of the Special Courts, it can be concluded that the Act has given primacy and exclusivity to the Special Courts over normal Courts. The expression 'bail' in section 14-A of SC/ST Act includes anticipatory bail as well.

24. Thus, once the original jurisdiction of the High Court for grant of bail is excluded, an application for anticipatory bail invoking the concurrent jurisdiction under section 438 Cr.P.C, which is also original in its nature and scope stands excluded. Consequently, the appellate jurisdiction alone can be exercised by the High Court, under Section 14-A.

25. Similarly, the Special Courts alone have jurisdiction to consider the bail applications and not the Sessions Court. It is a

different matter that the Sessions Courts in Kerala are notified as the Special Courts. Notifying the Sessions Courts as Special Courts cannot derogate from the requirement of the statute, that, only the Special Court can consider the matters including applications for bail arising under the SC/ST Act.

26. Thus, in view of the aforesaid principles enumerated above, firstly, the petitioner should have approached the Special Court for grant of anticipatory bail under Section 438 of the Cr.P.C. The order granting or rejecting the anticipatory bail under the provisions of SC/ST Act shall be amenable to the appellate jurisdiction of the High Court under Section 14A of the Act and not Section 438 Cr.P.C. In this context, I draw support from the Full Bench decision of the Allahabad High Court *In Re Provisions of Section 14A of SC/ST (Prevention of Atrocities Amendment) Act, 2015 (2018 CriLJ 5010)* and the judgement of the High Court of Kerala at Ernakulam in *K.M.Basheer v. Rajani K.T. And others, 2022 LiveLaw (Ker) 472*.

3. A perusal of the paper book further reveals that even at the time of filing of this petition before this court, an objection was raised by the registry of this court, which reads as under:

“Please check maintainability of petition under Section 438 Cr.P.C. being SC/ST matter.”

4. The said objection was removed by the filing counsel by stating as under:

“...Kindly put up as it is before Hon’ble Bench, Refiled...”

5. In view of the above quoted judgment, learned senior counsel appearing for the petitioner submits that he may be permitted to withdraw this petition with liberty to avail his remedy for seeking bail in accordance with law, however he prays that the arrest of the petitioner be stayed for a period of eight weeks in view of the ensuing summer break in the courts

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below.

6. In view of the above submission of the counsel for the petitioner, the present petition is dismissed as withdrawn with liberty to the petitioner to avail his remedy for seeking bail in accordance with law and in the meanwhile, it is directed that no coercive steps be taken against the petitioner for a period of six weeks from today, so as to enable him to take recourse to his remedies as per law.
7. The instant petition is disposed of in aforesaid terms.
8. All pending applications shall stand closed.

25.05.2023
Himani

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No