

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

**CRA-S No.2271 of 2022
Date of Decision:30.01.2023**

Devender Singh

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Argued by:- Mr. B.S.Rana, Senior Advocate with
Mr. Nayandeep Rana, Advocate,
for the appellant.

Mr. Apoorv Garg, Deputy Advocate
General, Haryana.

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MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the order dated 02.08.2022 passed by learned Additional Sessions Judge, Jind, whereby the application moved by the appellant-accused (here-in-after to be referred as 'the appellant') under Section 438 Cr.P.C for seeking the relief of anticipatory/pre-arrest bail in the criminal case arisen out of the FIR bearing No.29 dated 14.06.2022 registered at Police Station GRP, Jind, under Sections 307, 342, 201 read with Section 34 IPC and Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act of 1989') has been dismissed, he (appellant) has preferred the instant appeal as envisaged under Section 14A of the Act of 1989 and has prayed for the grant of the afore-said relief.

2. Shorn and short of the unnecessary details, the allegations, as levelled by respondent No.2-complainant-injured in the subject FIR, are that on 07.06.2022, the appellant and his co-accused picked him up from Village Dhakal and they took him to the Police Post RPF at Narwana and detained him there. On 10.06.2022, while he was pouring the petrol in the fire for preparing the burning coal for '*hukka*' (hubble-bubble/narghile) for the TTE, he accidentally caught fire. Thereafter, the appellant and his co-accused ASI Sultan took him along-with them and the appellant threw him in the Canal instead of taking him to the hospital and he was rescued by some unknown person.

3. The respondent-State has already filed the Status-report, by way of the affidavit of the Deputy Superintendent of Police, Railways, Haryana, along-with Annexures R-1 to R-7 and the vernacular versions of Annexures R-2 and R-5 to R-7.

4. I have heard learned Senior counsel for the appellant-accused as well as learned State counsel and learned counsel for respondent No.2-complainant in the present appeal and have also perused the file carefully.

5. Learned Senior counsel for the appellant has contended that the complainant had accidentally suffered the burn injuries and therefore, no offence under Section 307 IPC was made out against the appellant and even otherwise, the complainant had sworn the affidavit Annexure P-2 and had deposed therein that he himself had jumped into the river as he was having the burning sensation due to the injuries suffered by him and moreover, the appellant did not use any derogatory or insulting words in

the name of the caste of the complainant and therefore, no offence under the Act of 1989 can be held to have been committed by him (appellant) and hence, he deserves the relief as prayed for in the instant appeal.

6. Per-contra, learned State counsel and learned counsel for respondent No.2-complainant have argued that the appellant had pushed/ thrown the complainant in the Canal with an intention to kill him and the alleged affidavit Annexure P-2 bears the date 14.06.2022 whereas in his statement as recorded under Section 164 Cr.P.C on 04.08.2022 (Annexure R-6), the complainant has reiterated the allegations levelled by him against the appellant in the FIR and the same attract the offences as described in Section 3(2)(v) & (vii) of the Act of 1989, besides other offences involved in this case and it being so, the present appeal be dismissed.

7. Even if the complainant had accidentally suffered the burn injuries, even then, in the normal course of events, the appellant and his above-named co-accused were supposed to take him (complainant) to the hospital for his treatment but this Court cannot lose sight of the facts that the complainant has specifically alleged in his statement Annexure R-6 that the appellant and his co-accused told him that they would take him to the doctor but they took him to the Canal and asked him as to whether he knew how to swim and on his replying in the negative, the appellant pushed/ threw him in the Canal. Then, Annexure R-6 (mentioned as R-4 in the Index submitted along-with the Status-report) is the statement of Sandeep Saharawat, Station Master Narwana, as recorded under Section 164 Cr.P.C, wherein he has categorically stated that the appellant and ASI Sultan had

taken the complainant along-with them in the private vehicle. It is well settled that the intention/*mens rea* and knowledge are the key factors to determine as to whether the offence under Section 307 IPC is made out or not and this question can and shall be looked into and adjudicated upon by the trial Court at the appropriate stage after appreciating and evaluating the evidence that may be led on the record during the course of the trial and the same cannot be decided at the stage of dealing with the instant appeal.

8. As regards the genuineness and veracity of the depositions made by the complainant in his affidavit Annexure P-2, the same shall again be the subject matter for consideration and adjudication by the trial Court at the relevant stage and the same cannot be determined while deciding this appeal.

9. So far as the contention regarding the appellant having not committed any offence under the Act of 1989 is concerned, it is pertinent to mention here that it is not only the use of derogatory and insulting language against someone belonging to the scheduled caste or scheduled tribe, which makes out an offence under this Act and rather, several other acts and omissions, as enumerated in Section 3 thereof, also constitute the offences under the said Act. The factum regarding the afore-discussed allegations as levelled by the complainant against the appellant, being sufficient to make out the offences under Section 3(2)(v) and (vii) of the above-said Act or not, would be ascertained/determined by the trial Court at the proper stage in the light of the evidence which may be brought on the file during the trial proceedings and the same cannot be decided at this stage.

10. Keeping in view the fore-going discussion as well as the provisions as contained in Section 18 of the Act of 1989 which prohibit the grant of the relief of pre-arrest bail to a person accused of the commission of any offence under this Act and also the gravity of the offence as alleged to have been committed by the appellant-accused in the present case, this Court is of the considered opinion that the impugned order does not suffer from any illegality, infirmity, irregularity or perversity so as to call for any interference by this Court and the appellant does not deserve the relief of anticipatory/pre-arrest bail. Resultantly, the appeal in hand, being *sans* any merit, stands dismissed accordingly.

January 30, 2023

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**(MEENAKSHI I. MEHTA)
JUDGE**

*Whether speaking/reasoned:
Whether Reportable:*

*Yes
No*