

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

287

CRA-S-3145-2023 (O&M)
Date of decision: 19.12.2023

Pardeep Sharma

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Sanjeev Majra, Advocate
for the appellant.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Shadab Ahmed, Advocate
for the complainant.

MANISHA BATRA, J. (Oral)

1. The present appeal has been filed under Section 14-A (2) of the Scheduled Castes and Scheduled Tribes (Prevention of atrocity) Act, 1989 (*for short 'the SC/ST Act'*) read with Section 482 of Code of Criminal Procedure by the appellant challenging the order dated 21.10.2023 passed by learned Additional Sessions Judge, Special Court under the SC/ST Act, Kurukshetra whereby an application filed by him for grant of anticipatory bail in case arising out of FIR No. 630 dated 20.09.2023, registered under Sections 323, 34, 506, 341, 354-A of the IPC and Section 3(1)(r), 3(1)(s),

3(1)(w), 3(2)(VA) of the SC/ST Act, had been dismissed.

2. Brief facts relevant for the purpose of disposal of this appeal are that the aforementioned FIR has been registered on the basis of a written complaint filed by the complainant 'N' (name withheld) alleging therein that on 13.09.2023, she along with her husband and child was going towards Landmark Hospital, when accused Gauri made a call on cellphone of her husband asking about his whereabouts, which were disclosed by her husband. Thereafter, when they reached near Landmark Hospital, the accused Chavi Sharma along with the appellant were already found present there in a car. They stopped their car in front of motorcycle of the husband of the complainant. The appellant caught hold of the complainant and pulled her towards his side. Thereafter, he outraged her modesty by pressing her breasts. Her husband resisted to the same and then the appellant and co-accused Chavi Sharma opened an assault upon him by striking blows with iron rod and *danda* which they took out from his vehicle and caused injuries to her husband. She rushed for his rescue but appellant struck a blow with *danda* on her right arm while calling her in the name of her caste and by uttering "*Sale dedh chamar* we will teach you a lesson". She raised alarm which attracted the public persons who rescued them from the clutches of the assailants. Even while retreating, the assailants threatened to kill them. They were taken to the hospital and were treated. She prayed for taking action against the culprits. After registration of the FIR, investigation proceedings have been initiated and are going on.

3. It is submitted in the Grounds of Appeal and learned counsel for the appellant has argued that the impugned order is not sustainable in the

eyes of law as the learned Special Court, while dismissing the bail application of the appellant ignored the fact that the ingredients required for proving commission of offence punishable under the provisions of Section 3 of the SC/ST Act had not at all been made out. Infact, it was a case of political rivalry, as the husband of the complainant had filed nomination for the post of Sarpanch in the village and the appellant had not supported him. The appellant is a member of Block Samiti, whereas co-accused Chavi Sharma is son of Ex-Sarpanch of his village. The husband of the complainant had been sending messages in a whatsapp group of which the appellant was also a member, therein levelling false allegations of embezzlement against him and a scuffle had taken place between the respondent and the appellant, when he had raised objection qua the same. No occurrence as narrated in the complaint had taken place. The custodial interrogation of the appellant is not required. He is ready to join the investigation. There is no bar in granting benefit of anticipatory bail under the provisions of 482 of Cr.P.C. Hence, he has argued that the appeal deserves to be allowed and he deserves to be granted pre-arrest bail. To fortify his argument, learned counsel for the appellant has placed a reliance upon authority cited as ***Dr. S. Ariharan and another vs. Inspector of Police and another, Crl. OP (MD) No. 17224 of 2019***, decided on 26.11.2019, wherein the High Court of Madras had observed that Section 438 of Cr.P.C. was not a sole repository of the power to grant anticipatory bail. It was observed that the High Court is very much possessed of the power to grant anticipatory bail even in cases arising out of the SC/ST Act and the petitions can be filed under Article 226 of Constitution of India or Section 482 of

Cr.P.C.

4. The respondent State has filed reply by way of affidavit. It is submitted therein and learned State counsel has argued that there is no infirmity in the order passed by the learned Special Court as there are specific allegations against the appellant that he alongwith co-accused has abused the victim in the name of her caste and has outraged her modesty besides assaulting her husband and herself and intimidated and insulted her within public view. He has argued that the investigation is still pending. The recovery of the vehicle and weapon which were used at the time of committing the subject offences is to be effected from the appellant and therefore, his custodial interrogation is must. With these broad arguments, he has argued that the appeal does not deserve to be allowed.

5. I have heard learned counsel for the appellant and learned State counsel and have perused the record.

6. In the instant case, as per the allegations levelled in the FIR, the appellant while opening an assault upon the victim and her husband on the fateful day, had pulled her towards him with the evil intention, had pressed her breasts and had also called her by the name of caste by abusing her, besides physically assaulting herself and her husband. There are specific allegations that all this was done at a place, which was within public view. The appellant and the victim, undoubtedly, are belonging to the same village and, therefore, it shall be presumed that the appellant was aware of the caste of the victim, unless the contrary is proved. The allegations in the FIR make out a *prima facie* case for commission of offences punishable under Sections 3(1)(r), (s) and w(i)(ii) of the SC/ST Act, besides offences punishable under

Sections 323 and 506 of the IPC. Undoubtedly, despite the bar created under Section 18 of the SC/ST Act that the provisions of Section 438 Cr.P.C. are not applicable to the offences committed under this Act, this Court has extraordinary power to entertain a plea of an accused for grant of anticipatory bail even in a petition filed under Section 438 Cr.P.C. However, that power can be exercised, if it is revealed that no *prima facie* material exists warranting arrest of the accused in the case. Reliance in this regard can be placed upon ***Prathvi Raj Chauhan vs. Union of India and others, AIR 2020 SC 1036***, wherein the Apex Court considered the impact of Section 18-A of the SC/ST Act and held that as far as the provisions of Section 18-A and anticipatory bail are concerned, in case where no *prima facie* material exists warranting arrest in a complaint, the Court has inherent power to direct a pre-arrest bail. However, in the instant case, as discussed above, a *prima facie* case for commission of the aforementioned offences has been made out from the allegations in the FIR. As such, in my considered opinion, the provisions of Section 18 and 18-A of the SC/ST Act certainly apply to the present case. Therefore, anticipatory bail cannot be granted to the appellant. In this regard, reliance can be placed upon the judgment rendered by the High Court of Kerala in ***Abbas R. V. vs. State of Kerala and others, 2022 (5) KLT 618***, wherein similar observations have been made.

7. Accordingly, it is held that no legal infirmity or illegality can be found in the order dated 21.10.2023, passed by the Additional Sessions Judge, Special Court, Kurukshetra, whereby the plea for granting anticipatory bail, as prayed for by the appellant, had been declined. It is also

held that it is not a fit case for granting anticipatory bail to the appellant.
Hence, the present appeal stands dismissed.

[MANISHA BATRA]
JUDGE

19.12.2023
Parveen Sharma/Waseem Ansari

Whether speaking/ reasoned : *Yes*
Whether reportable : *Yes*