

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRA-S-715-2023 (O&M)
Date of decision: 30.04.2024

Amrik Singh @ Amrik Singh Bhullar ...Appellant

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. P. S. Sekhon, Advocate
for the appellant.

Mr. Satjot Singh, AAG, Punjab.

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'*) by the appellant challenging the order dated 30.12.2022 passed by the learned Additional Sessions Judge, Moga, whereby an application filed by him under Section 438 Cr.P.C. for grant of anticipatory bail in case arising out of FIR No. 168 dated 24.11.2022, registered under Section 366 of IPC, Section 3 of SC/ST Act and Sections 67, 67-A of the Information & Technology Act at Police Station Kot Ise Khan, District Moga, had been dismissed.
2. Brief facts relevant for the purpose of disposal of this appeal are that the aforementioned FIR has been registered on 24.11.2022 on the basis

of the statement recorded by respondent No. 2/complainant Sukhwinder Singh alleging therein that he got married with Sandeep Kaur in the year 2014. Two children, one female and one male, were born out of the wedlock. From the last three years, his wife was having illicit relations with the present appellant. Previously, they had been meeting secretly in the village but about two years back, the appellant had induced his wife by giving false assurance of performing marriage with her and had taken her out of her matrimonial home. The appellant and his wife had taken away his minor daughter along with them and they were living at some unknown place since then. He alleged that on 22.11.2022 at about 5:20 PM, the appellant sent an objectionable video of his wife on his Whatsapp and thereafter made a call to him and while hurling abuses relating to his caste, proclaimed that the complainant should die by consuming something as he developed relations with his wife and the latter could not do anything. Thereafter, he sent two objectionable photographs of his wife on his Whatsapp. He alleged that now the appellant had been posting these photographs and videos on social media. He prayed for taking action against the appellant. On this statement, the FIR has been registered and the investigation is under way. He had moved an application for grant of anticipatory bail before the Court of learned Additional Sessions Judge, Moga but the same had been dismissed on the ground of maintainability as well as by observing that it was not a fit case for grant of pre-arrest bail, vide impugned order dated 30.12.2022. Feeling aggrieved, the appellant has preferred the present appeal.

3. The instant appeal has been filed by the appellant on the grounds and it has been argued by his counsel that he has been falsely implicated in this case. The allegations as levelled against him do not make

out any case for commission of either of the offences. His wife has been voluntarily and willingly residing with the appellant from the last about three years. He has never forwarded any objectionable photographs of hers to the complainant or to anybody else. Neither of the provisions of Section 3 of SC/ST Act has been attracted in this case against the appellant. Co-accused Sandeep Kaur, who is wife of the complainant, has since been extended benefit of pre-arrest bail. Custodial interrogation of the appellant is not required. He is ready to join investigation. Learned Additional Sessions Judge, Moga had wrongly observed that the provisions of Section 438 of Cr.P.C. were not attracted in view of the allegations qua commission offence punishable under Section 3 of SC/ST Act. With these broad submissions, it is argued that the present appeal deserves to be accepted and the appellant deserves to be given benefit of pre-arrest bail.

4. On the other hand, it is argued by learned State counsel that there are serious and specific allegations against the appellant. He had not only induced the wife of the complainant to go with him to compel her to marry him or to force or seduce her to have illicit intercourse with him but had also kidnapped daughter of the complainant out of lawful guardianship, without his permission and had also abused him in the name of his caste. It is also argued that there are allegations that the appellant had made objectionable videos and photographs of the wife of the complainant viral by sending them not only to complainant but by uploading the same on social media and had been keeping his wife with him in an illegal manner. It is further argued that thorough investigation is required to be conducted in the matter. Even otherwise, provisions of Section 3 of the SC/ST Act are fully attracted in this case, thereby creating a bar for exercising powers under

Section 438 of Cr.P.C. Hence, it is urged that the present appeal is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record carefully.

6. As per allegations, co-accused Sandeep Kaur, who is wife of the complainant, was having illicit relations with the appellant and had been induced/compelled by the appellant to go along with him and both of them had also taken the daughter of the complainant with them. Taking of the daughter of the complainant away from him by co-accused Sandeep Kaur does not bring the case within the ambit of Section 361 of IPC, punishable under Section 366 of IPC as co-accused Sandeep Kaur, being mother, is also lawful guardian of his daughter. So far as the applicability of Section 366 of IPC qua co-accused Sandeep Kaur is concerned, the essential ingredients of this section are that there must be kidnapping or abduction of a woman and the same must be with intent to compel her to marry with any person against her will or knowing it to be likely that she will be forced or seduced to illicit intercourse or knowing it to be likely that she will be so forced or seduced.

6. In the present case, even on taking the allegations, as levelled in the FIR, to be correct on the face of the record, it will be a debatable question as to whether the essential ingredients for commission of offence under Section 366 of IPC have been made out against the appellant or not since it is the case of the complainant himself that his wife was having illicit relations with the appellant and had gone away with him. Further, with regard to allegations of the case falling within the ambit of Section 3 of SC/ST Act, it may be stated that though there are allegations levelled in the FIR that on 22.11.2022, the appellant had called him on Whatsapp and

hurled caste related abuses to him but the case cannot be stated to be falling within either of the provisions of Section 3 of SC/ST Act. The provisions of Section 3(1)(s) of SC/ST Act say that any person, who intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view or abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view shall be liable to be punished under Section 3 of SC/ST Act. However, the appellant cannot be stated to have abused the complainant within the public view, because as per own version of the complainant, the appellant had abused him on Whatsapp call. Therefore, no prima facie case for commission of offence punishable under Section 3 of SC/ST Act can be stated to have been made out, thereby attracting the bar under Section 18 of SC/ST Act. Reliance in this regard can be placed upon [Dr. Subhash Kashinath Mahajan v. State of Maharashtra and Another \(2018\) 6 SCC 454](#), wherein Hon'ble Supreme Court has held that anticipatory bail could be granted if a prima facie case of commission of an offence under the Act is not made out or if it can be shown that the allegations were false. Accordingly, it is held in the peculiar facts and circumstances of the case that the appellant deserves to be extended benefit of pre-arrest bail.

7. Accordingly, the present appeal is allowed. The impugned order is set aside. The order dated 13.03.2023, granting interim bail to the petitioner, is made absolute, subject to the conditions envisaged under Section 438(2) of Cr.P.C. This order shall also be subject to the following conditions:-

- (i) The appellant shall cooperate with the investigation and shall appear before the Investigating Officer as and when required.

- (ii) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any Police Officer.
- (iii) He shall not commit any similar offence while on bail.

8. In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with law.
9. It is made clear that the observations made hereinabove are only for the purpose of deciding the present appeal and the same shall not be construed as an expression of opinion on the merits of the case.

30.04.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No