

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-2260-2024

Decided on 13.06.2024

Gurdev Singh

... Appellant

VS.

State of Punjab & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Saurabh Kaushik, Advocate for the appellant

Sandeep Moudgil, J.

1. The present appeal under Section 14(2) of the SC & ST (Prevention of Atrocities) Act, 1989 (in short, the SC & ST Act) has been preferred by the appellant impugning the order dated 28.05.2024 passed by Addl. Sessions Judge, Patiala whereby the petition under Section 438 CrPC filed by the appellant seeking grant of anticipatory bail in case FIR No.269 dated 24.12.2023 under Sections 341, 354-A(2), 354-D, 500 IPC and Sections 3(1) and 3(2) of the SC & ST Act registered at Police Station Nabha, District Patiala has been dismissed.

2. The present FIR has been got registered by the father of the victim on the allegation that his daughter is studying in Govt. Ripudaman College, Nabha and she used to travel to her college through bus daily. That appellant-Gurdev Singh is harassing his daughter (victim) for the last so many months telephonically. When the victim used to go to her college, the appellant used to stop her and force her to enter into sexual relationship with him and to perform marriage with him, in connivance with his mother. The victim even left her studies. The complainant tried to make understand

Gurdev Singh number of times for the sake of his reputation and complained to his parents, but he did not stop, rather mother of Gurdev Singh, namely Paramjit Kaur is posting bad posts against his daughter to the people of his village. With this, their reputation has spoiled in the village and it became difficult to live in the society for them. Hence, the present FIR was got registered.

3. Learned counsel for appellant contended that the appellant is innocent and has been roped in a false case inasmuch as there is not even a single allegation in the entire FIR that appellant has used any derogatory language against the caste of the complainant or his daughter so as to invite the rigors of the penal provision under the SC and ST Act and as such, the same are not made out. He further submits that appellant is ready to join the investigation and undertakes to abide by all the terms and conditions of the bail order.

4. It is further argued that the offence under Section 3 of the SC/ST Act is not even remotely made out inasmuch as no specific words have been attributed to the appellant and only general and vague allegation has been made that while going away gave casteist abuse, as is alleged in the FIR. It is also submitted that it is nowhere mentioned in the FIR that the appellant had knowledge that the accused persons belonged to a Scheduled Caste. Reliance has been placed upon the latest judgment of Supreme Court in **Prathvi Raj Chauhan Vs. Union of India and others, reported as 2020(4) SCC 727**, to contend that in such like situation, the bar under Sections 18 and 18-A of the SC/ST Act would not apply.

5. Notice of motion.

6. On the asking, Mr. Jaspal Singh Guru, AAG Punjab accepts notice and vehemently contested the arguments raised by the learned counsel for the appellant and brought to the notice of the Court that even the FIR is required to be registered under The Prevention of Children from Sexual Offences (POCSO) Act as the victim is minor at the time of occurrence. He contended that there are serious allegations against the present appellant as he used to harass and even molested the daughter of the complainant and also pressurized her to enter into sexual relationship with him. Therefore, the appellant does not deserve any concession of anticipatory bail as custodial interrogation of the appellant is required.

7. Heard learned counsel for the parties and gone through the record.

8. A perusal of the FIR would show that it has not been specifically stated that the appellant had any knowledge that the complainant belonged to a Scheduled Caste and even no specific words have been attributed by the appellant. The only allegation leveled is that the appellant used to stop the daughter of the complainant on her way to college and verbally forced the girl to enter into sexual relationship with him. The complainant has specifically mentioned two occasion on which the appellant allegedly did this misdemeanor notwithstanding this fact, the record is silent if at all any complaint or anything of that sort was ever made by the complainant to the police authorities. That being so, the penal provisions under the SC & ST Act have been added *prima facie* to spice up the contents of the FIR. In any case, this Court is not convinced that the ingredients, as alleged in the FIR, either under the POCSO Act or under the SC & ST Act are, *prima facie*, made out.

The matter is pending trial and this Court shies away from expressing any views on merits of the case.

9. Keeping in view the abovesaid facts and circumstances as well as legal position, prima facie, the ingredients of Section 3(1) & (2) of the SC/ST Act are not made out and thus, the present appeal is allowed and in the event of arrest, the appellant shall be released on bail subject to furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer. The Appellant shall join the investigation within one week as and when called upon to do so and shall abide by the conditions as provided under Section 438(2) of Cr.P.C. In case the petitioner does not join the investigation, the order so passed by this Court shall stand automatically stands cancelled.

10. However, nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present appeal for grant of anticipatory bail.

13.06.2024
V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

- Yes/No
- Yes/No