

CRA-S-2301-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2301-2024
Reserved on: 06.09.2024
Pronounced on: 26.09.2024

Jazbaat Naagar ...Appellant

Versus

State of Haryana and another ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Jitender Dhanda, Advocate
for the petitioner.

Mr. Aashish Bishnoi, DAG, Haryana.

Mr. Mohit Nehra, Advocate
for respondent No.2.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
642	21.08.2023	Azad Nagar, District Hisar	323, 34, 452, 506 IPC, 3(1)(r) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) 1989 (Amendment 2015)

1. Aggrieved by the grant of pre-arrest bail granted to the accused 2nd Respondent by the Additional Sessions Judge, Hisar, under Section 438 CrPC, 1973, for the offenses including under the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989, [SCSTPOA], the victim has come up before this court under Section 439(2) of CrPC, by filing an appeal under section 14-A of SCSTPOA, seeking cancellation of the bail.

2. The facts and allegations are being taken from the reply filed by the State, which reads as follows:

“2. That brief facts of the case are that on 21.8.2023 an information was received from MHC P.S. Azad Nagar, Hisar that Jajbaat son of Jagram resident of Virat Nagar, Azad Nagar, Hisar is admitted in GH, Hisar due to injuries sustained in fight. In pursuance of which SI Ramesh Kumar reached GH, Hisar and after obtaining ruga and MLR of injured, moved an application for recording statement of injured, upon which doctor declared him fit for statement, and thereafter, statement of appellant was recorded in which it was alleged that I am resident of above noted address and 19 years old and studying in B.A.II year. On 21.8.2023 he was going

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from Arya Nagar, from bank canal to his house at Virat Nagar on his motorcycle. On the way Ronit caste Jat resident of Scholar colony and Nakul Sharma resident of Azad Nagar, Hisar met me and they were consuming liquor. It was alleged that both of them stopped the complainant and asked me to take back the case which was registered against Lucky Sunar and Vikas Malik and simultaneously given 2-3 slap blows. Thereafter, complainant reached his house on his motorcycle. Thereafter, at about 1:45 PM Ronit and Nakul came to the house of complainant after calling him. It was alleged that Ronit was carrying danda in his hand and Nakul was carrying iron rod in his hand. It was alleged that both of them started beating him and given caste abusive words by saying "Dhed, Kamin and Dhanak". It was also alleged that Nakul gave rod blow on the left foot of the injured/complainant and Ronit gave danda blow on the left side of head and both of them given beating to the complainant. It was also stated that when mother and brother of complainant came, then both of them had gone from the house of complainant by saying that today you are spared and next time when you meet alone you will be killed. The motive behind alleged incident is that my brother Jamir got 8 registered case FIR No. 418 dated 12.6.2023 at P.S. Azad Nagar, Hisar for which today they have given beating to create pressure for settlement in the said case. It was also stated that the complainant belong to Dhanak community and strict legal action should be taken against Ronit and Nakul. It was also stated that his father Jagram took him to GH, Hisar for treatment, it was also stated that accused Ronit and Nakul came on Splendor motorcycle and they fled after said incident on same motorcycle."

3. Appellant's counsel argued that wrong penal of provision was added by the investigator and even the court granted the bail considering the wrong provisions, as such on this ground alone the bail has to be cancelled and the matter has to be remanded back.

4. Counsel for the State submitted that the investigator undertakes to comply with all the directions passed by this Court.

5. Counsel for the accused submitted that in case this Court considers that wrong penal of provision was inserted by the investigator on this ground alone bail should not be cancelled. Counsel for the accused further submits that the accused did not use any such derogatory words and even otherwise he undertakes to comply with all the additional conditions imposed by this Court, but bail should not be cancelled.

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6. The State's counsel opposes bail and refers to the reply.

7. It would be appropriate to refer to the following portions of the reply, which read as follows:

"4. That after registration of the case, as the offences being committed under SC & ST Act, the investigation of the case was conducted by Sh. Vinod Shankar, HPS, Dy. Superintendent of Police, Headquarter, Hisar, who during the investigation of the case visited the place of occurrence and prepared rough site plan and recorded the statement of witnesses. During the investigation of the case, caste certificate of the appellant was taken in possession on 04.9.2023. It is pertinent to mention here that the complainant/appellant also produced one pen drive before the investigating officer, which was taken in possession vide recovery memo dated 13.9.2023 along with certificate under section 65-B Indian Evidence Act.

5. That there are total 5 injuries on the person of the appellant/complainant as revealed from the MLR of the appellant. Copy of MLR No. MKS/101/2023/HSR dated 21.8.2023 is Annexure R-1. During the investigation of the case, investigating officer, moved an application for seeking nature of injuries on 28.9.2023, in pursuance of which injury No. 4 and 5 were declared simple in nature. Later on after going through the X-Ray reports of the appellant, on 11.6.2024 as there was no fracture in the X-Ray reports of the appellant, therefore, all the injuries were declared simple in nature on the person of the appellant/complainant.

6. That during the investigation, due to transfer of Vinod Shankar, HPS, the case file was transferred to the answering deponent in pursuance of the order No. 8732-39 dated 23.2.2024 passed by Superintendent of Police, Hisar. It is pertinent to mention here that accused/respondent No.2 Ronit moved an application before the Hon'ble Court of Session, Hisar from where he was given benefit of interim bail vide order dated 23.5.2024, in pursuance of which on 28.5.2024 respondent No.2 Ronit was joined in investigation of the present case. It is pertinent to mention here that the respondent No.2 during interrogation got recovered one motorcycle bearing registration No. HR86A-7040 along with its original registration certificate as well as one wooden danda, which were used in the alleged occurrence and all the recovered articles were taken in possession vide recovery memo dated 28.5.2024. During interrogation respondent No.2 also got his disclosure statement recorded and identified the place of occurrence. It is further pertinent to mention here that the respondent No.2 was juvenile at the time of alleged occurrence as revealed

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from the school record, according to which the date of birth of the respondent No.2 is 05.1.2006.”

8. S 3(2) of SCSTPOA reads as follows:

[3](2) . Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

[3](2)(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal (45 of Code 1860) for such offences and shall also be liable to fine;]

9. S 3(1) of SCSTPOA reads as follows

[3]. Punishments for offences atrocities.—3[(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

[3](1)(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

10. The allegations are abusing the people belonging to the scheduled castes by using derogatory words prohibited under the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SCSTPOA).

11. The alleged derogatory words were not spoken in public view; as such, the offense under section 3(1)(r) would not prima facie apply, but the offense under S. 3(2)(va) would attract. Thus, the Court did not apply the penal provision correctly. Be that as it may, now, this Court shall consider the offense having been committed under Section 3(2)(va) of the SCSTPOA, but still, it is not a case to send the accused to pre-trial custody. This Court shall impose strict conditions to ensure that he does not repeat the offense. However, evidence might be prima facie sufficient to launch prosecution or to frame charges, but the Court is not considering the evidence at that stage but analyzes it for the purpose of cancellation of bail.

12. In *Prathvi Raj v. Union of India*, 2020:INSC:157 [Para 10], AIR 2020 SC 1036, a three-judge bench of the Hon’ble Supreme Court read down S. 18 by declaring as follows,

[10]. Concerning the applicability of provisions of section 438 Cr.PC, it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A (i) shall not apply.

13. An analysis of the prayer and the arguments addressed by the parties, it is not a case to cancel the bail granted to respondent No.2, but this Court is of the view that respondent must comply with following added conditions.

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14. Given the nature of the allegations and the other circumstances peculiar to this case, the respondent No.2 shall not enter the victim's property, workplace, and residence until the statements of all non-official and informal witnesses in the trial are recorded. This Court is imposing this condition to rule out any attempt by the accused to incapacitate, influence, or cause any discomfort to the victim. Reference be made to *Vikram Singh v Central Bureau of Investigation*, 2018 All SCR (Crl.) 458; and *Aparna Bhatt v. The State of Madhya Pradesh*, 2021:INSC:192, 2021 SCC Online SC 230.

15. Given the background of allegations against the respondent No.2, it becomes paramount to protect the victim and their family members, as well as the members of society, and incapacitating the accused would be one of the primary options until the filing of the closure report or discharge, or acquittal. Consequently, it would be appropriate to restrict the possession of firearm(s). [This restriction is being imposed based on the preponderance of evidence of probability and not of evidence of certainty, i.e., beyond reasonable doubt; and as such, it is not to be construed as an intermediate sanction]. Given the nature of the allegations and the other circumstances peculiar to this case, the respondent No.2 shall surrender all weapons, firearms, and ammunition, if any, along with the arms license to the concerned authority within fifteen days from today and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the respondent No.2 shall be entitled to renew and take it back in case of acquittal in this case, provided otherwise permissible in the concerned rules. Restricting firearms would instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offense.

16. In *Siva v. State*, Crl.A. No.46 of 2024, decided on 01 Feb 2024, Justice M. Nirmal Kumar of Madras High Court, while granting bail imposed the following condition,

[6] ...After executing all the sureties within 15 days from coming out of prison, the appellants shall file affidavit before the concerned Court which reads as follows:

“I, as a Citizen of India, having utmost faith in the Constitution of India, am quite aware that 'Untouchability' has been abolished under our Constitution. I, hereby, take pledge that knowingly or unknowingly, I will not practice social discrimination based on untouchability either by words or deeds or in any other manner. I am aware that it is my duty to serve in a true, honest and faithful manner, as per the basic principles laid down under the Constitution, to create an independent Society, without any discrimination. I solemnly affirm that this would stand to speak forever the faith I have in the Indian Constitution.”

17. Respondent No.2 is also directed to hand over two affidavits, in the same terms, attested by any Executive Magistrate or Notarized, to the concerned SHO within two weeks, one copy for the case file and one for the victim.

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18. The conditions mentioned above imposed by this court are to endeavor to reform and ensure the accused does not repeat the offense. In Mohammed Zubair v. State of NCT of Delhi, 2022:INSC:735 [Para 28], Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts, while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed."

19. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

20. A certified copy of this order would not be needed and any Advocate for the Appellant can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

21. Appeal disposed of in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

26.09.2024
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Whether speaking/reasoned: Yes
Whether reportable: YES.