

2024:PHHC:066875



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CRA-S-1383-2022 (O&M)
Date of decision: 14.05.2024

Gunjan Gogia and others ...Appellants

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Vishal Singh, Advocate
for the appellants.

Mr. Arjun Lakhanpal, Addl. A.G., Haryana.

Mr. Rahul Deswal, Advocate
for respondent No. 2.

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 Atrocities) Act, 1989 (for short 'the SC/ST Act') by the appellants challenging the order dated 17.01.2022 passed by the learned Additional Sessions Judge, Karnal in Bail Application No. 34 of 2022 filed by the appellants/accused in case arising out of FIR No. 699 dated 22.12.2021, registered under Sections 323, 354-A, 406, 498-A, 506, 509, 34 of IPC and Section 3(2)(va) of SC/ST Act at Police Station Sector 32/33, Karnal, whereby the above said application of the

appellants for grant of anticipatory bail had been dismissed.

2. Brief facts relevant for the purpose of disposal of this appeal are that the aforementioned FIR was registered on the basis of a written complaint filed by respondent No. 2/complainant alleging therein that she was married with the appellant No. 1 Gunjan Gogia on 19.02.2019 according to Sikh rites and ceremonies. Her parents had spent an amount of more than Rs. 20 Lakhs in the marriage and gold ornaments, furniture and other articles were given to the appellants in the form of dowry. She alleged that the appellants, who are her husband and other members of her in-laws family, were not satisfied with the dowry so given and they started harassing her physically as well as mentally by taunting that the dowry so received as not as per their status and was of low quality. At that time, she was in a govt. job and was working as a permanent Assistant Professor at IHM Institute at Ahmedabad. However, the appellants induced her to leave that job by saying that they were having good business and would keep her with respect and love and she did not need to pursue her job any further. They even assured her to continue her further education. By believing them, she left her job but thereafter, they started taunting her that she was dependent upon them and as to why she was not working. She alleged that the appellants raised demand of a car and Rs. 5 Lakhs from her by asking her to bring the same from parents and when she refused to do so, then she was physically assaulted. All her ornaments were kept by the appellants and she was not allowed to use them. She alleged that on 24.04.2019, she was physically assaulted by the appellants on account of demand of car and money and as she sustained injuries, then feeling scared, they had taken her to Max Hospital, Patparganj while extending threat to kill her if she disclosed about the incident to

anybody. She alleged that Tushar Valecha, cousin of her husband, was also keeping an evil eye on her and used to sexually harass her and when she complained about this fact to her husband and mother-in-law, then instead of redressing her grievance, they proclaimed that she would be meeting with this behaviour until their demand was met. She also alleged that she belonged to scheduled caste community, therefore, all the appellants used to insult her in the name of her caste by hurling abuses to her and by calling her as “*Chamari, Dhedni, Kamini and Neech*” and also by saying that she would remain as she was. The investigation was underway. The appellants had moved an application for grant of anticipatory bail before the Court of learned Additional Sessions Judge, Karnal but the same had been dismissed, vide impugned order dated 17.01.2024 by observing that the provisions of Section 438 of Cr.P.C. were not attracted in this case as the appellants had been booked for commission of offence punishable under Section 3(2)(va) of SC/ST Act.

3. The instant appeal has been filed by the appellants on the grounds and it has been argued by their counsel that they have been falsely implicated in this case. No case for commission of subject offences much less offence under Section 3(2)(va) of SC/ST Act has been made out against them. It was a love-cum-arranged marriage between the victim and appellant No. 1. The victim was working with Central Govt. Institute at Gujarat at the time of her marriage and she herself had chosen to leave her job and had taken admission in MBA at IITMM, Noida, expenses for which were borne by him. She herself was arrogant and of a quarrelsome nature and used to throw tantrums. She had deserted the appellant No. 1 and had left her matrimonial house in May, 2021. She had never communicated with the

appellants thereafter to resume her matrimonial life. She had lodged this FIR after a gap of 07 months by levelling false allegations and only after the appellant No. 1 had filed a petition seeking divorce. Vague, false and omnibus allegations have been levelled against the appellants. The provisions of SC/ST Act are not at all attracted. There is nothing on record to show that the remarks relating to her caste were made by either of the appellants in public view, which is pre-requisite to attract the relevant provisions of offence under Section 3 of SC/ST Act. The appellants have joined investigation on 21.02.2022 and thereafter also. Their custodial interrogation is not at all required. No useful purpose would be served by detaining them in custody. The Court of learned Additional Sessions Judge, Karnal, while passing the impugned order, ignored this fact and dismissed the application only by observing that the provisions of Section 438 of Cr.P.C. were not applicable to the matter. With these broad submissions, it is argued that the present appeal deserves to be accepted and the appellants deserve to be given benefit of pre-arrest bail.

4. *Per contra*, learned State counsel, assisted by learned counsel for the complainant, has argued that there are serious allegations against the appellants. These allegations also prove that the appellants had subjected the respondent No. 2 to cruelty on account of raising demand of dowry, criminally misappropriating her dowry articles, physically assaulting her, criminally intimidating her and also insulting her in the name of her caste. It is also argued that a *prima facie* case for commission of offence punishable under Section 354-A of IPC has also been made out as against appellant No. 5. The custodial interrogation of all the appellants is certainly required for thorough investigation in the matter. It is further argued that the

provisions of Section 3(2)(va) of SC/ST Act are *prima facie* attracted and, therefore, no ground for interfering with the impugned order passed by the learned Additional Sessions Judge, Karnal has been made out and he rightly held that the application for pre-arrest bail was not maintainable. Accordingly, 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. The appellant No. 1 is husband of the complainant; the appellant Nos. 2 and 3 are parents of appellant No. 1; appellant No. 4 is sister of appellant No. 1 and appellant No. 5 is his cousin brother. The allegations as levelled against them in the FIR are that they harassed the complainant on account of bringing less dowry and by raising demand for money and car and then for purchase of flat. Allegations have also been levelled in the FIR that they had extended beatings to her on 24.04.2019 and had thrown her out of her matrimonial house and that they had criminally misappropriated her dowry articles. It is not in dispute that the complainant belongs to scheduled caste. The Court of learned Additional Sessions Judge, Karnal, while passing the impugned order, had dismissed the application as filed by the appellants by observing that the appellants have been booked for commission of offence punishable under Section 3(2)(va) of SC/ST Act and in view of the bar created under Section 18 of the same Act, prayer made by the appellants for pre-arrest bail is not maintainable. The well settled proposition of law is 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. 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 observed so.

7. In this case, the appellants have been booked for commission of offence punishable under Section 3(2)(va) of the SC/ST Act on the allegations that they used to insult the victim in the name of her caste by hurling abuses to her and by calling her "*Chamari, Dhedni, Kamini and Neech*". Undoubtedly, as per Section 3(1)(r)(s) of the SC/ST Act, any person not being a member of the scheduled caste is liable for punishment if he intentionally, intimidates with an intent to humiliate or abuses any person or member of scheduled caste by caste in any place within the public view. Section 3(2)(va) of this Act provides that any person committing offences specified in the schedule against a person belonging to scheduled caste shall be liable for punishment. Meaning thereby, to attract the provisions of Section 3(2)(va) of this Act, it is required that either of the offences mentioned in the schedule, which is part of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, should be committed. So far as the offences under Section 3(1)(r)(s) of SC/ST Act are concerned, one of the essential ingredients of the same is that the person belonging to scheduled caste should be intentionally insulted, intimidated, humiliated or abused within the public view. In the instant case, however, there is no allegation in the FIR that the victim was insulted, intimidated, humiliated or abused by either of the appellants at some place within the public view. Therefore, the provisions of Section 3(2)(va) of SC/ST Act cannot be said to have been prima facie attracted. Learned Additional Sessions Judge did not consider this aspect of the matter while dismissing the application of the appellants seeking benefit of pre-arrest bail. In view of

the discussion as made above, it can also be not stated that the bar created under Section 18 of the SC/ST Act is applicable to the peculiar facts of the present case. Therefore, so far as the question of maintainability of an application under Section 438 of Cr.P.C. is concerned, in my considered opinion, the same is very much maintainable.

8. Further, as per own version of respondent No. 2, she had left her matrimonial home in the month of May, 2021. She lodged FIR against the appellants after a gap of 07 months i.e. on 22.12.2021. The allegations with regard to demand of dowry and consequent harassment of respondent No. 2 are not specific in nature as it has not been mentioned as to which of the appellants had raised what particular demand and at what particular point of time. Further on the basis of the allegations in the FIR, it has also not been revealed as to what particular article/property/istridhan belonging to respondent No. 2 had been entrusted to which particular appellant and how and in what manner, the same had been criminally misappropriated or converted to own use by such appellant(s). The allegations with regard to commission of offences under Sections 323, 506 and 509 of IPC are also against all of the appellants without attributing any specific overt act to either of them. So far as appellant No., 5 is concerned, he is a distant relative being son of the maternal uncle of husband of respondent No. 2. Though there are allegations that he sexually harassed respondent No. 2 but there is no mention about any date, month of time when such act has been committed by him as well as details of such act. The appellants have joined the investigation. Their custodial interrogation is no more required. No useful purpose would be served by detaining them into custody.

9. In view of the discussion as made above, the present appeal is

allowed. The impugned order is set aside. The order dated 25.08.2022, granting interim bail to the appellant, is made absolute, subject to the conditions envisaged under Section 438(2) of Cr.P.C.

14.05.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>