



CRA-S-2320-2024

1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

308

CRA-S-2320-2024

Date of decision: 16.07.2024

Vivek

....Appellant

V/s

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Abhimanyu Singh, Advocate for the appellant.
Ms. Ankita Ahuja, AAG Haryana.
Mr. Arjun Sheoran, Advocate and
Ms. Anjali Sheoran, Advocate
for the complainant/respondent No.2.

SUMEET GOEL, J. (Oral)

1. Present appeal has been filed under Section 14-A of the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter to be referred as '1989 Act') impugning the order dated 25.06.2024 whereby the plea made by the appellant (herein) for grant of pre-arrest/anticipatory bail in FIR No.85 dated 05.04.2024, under Sections 147, 149, 323, 341, 354-A, 354-D & 506 of IPC and Section 3(2)(v) of 1989 Act was declined.
2. The translated version of abovesaid FIR (as stated in the appeal) reads as under:-

“Statement of Suman wife of Karambir, Caste Chamaar, SC is resident of Ward No.3 Julana, Jind Mobile No.9468450732, stated that I am resident of abovementioned address and I used to do household work. My husband Shri Karambir son of Ram Kumar is working as Head Clerk in the Education Department, Rajaund. I have daughter aged about 15 years whose name is Diksha and she is studying in 10th class and she has very recently appeared in 10th class examination. Sir, Braini, Caste Jaat, resident of Julana for the last few days is chasing my daughter with bad



CRA-S-2320-2024

2

intention and my daughter Diksha as and when met the abovesaid Dainny, he used to tease her and also used to do obscene activities with her and upon objecting by her, he used bad and caste related abuses against her and also threatened her if she will disclose anything at home he will kill her and everyday, he used to roam around our house in the street as well as behind our street and he passed from our house on his bullet motorcycle by accelerating the bullet and by honking (pressing the horn at high volume) and instead of making him understand understanding repeatedly, he is not understanding anything. Yesterday, on 04.04.2024 in the night at about 8.30 pm, he came to our house on his bullet motorcycle and started calling my daughter at very loud pace and also tried to enter our house forcibly. I and my daughter Diksha came out of our house and came to the main gate of our house and he started giving obscene gestures towards my daughter. Upon this, I told him that I will make complaint to the police as you are harassing my daughter for the last few days. Upon this, the abovesaid accused came into anger and told us that he will take me and my daughter from our house and thereafter, he started giving abuses related words and said that you Chamaar dedho have no status before us. I am Jaat boy and suddenly as he came into anger, he had attributed bangle (Kada) made of iron, bulky with the intention to kill me after taking it out of from his hand and after gripping it with his fingers on my head and in front of me, he started teasing my daughter and also started giving beatings and also touched the private parts and after hearing the noises of scuffle, my husband Karambir also came out of from the house then the abovesaid accused started giving beatings to me and my daughter and my husband has rescued me and after leaving us, he attacked my husband and has also caused injuries with the said bangle (Kada) on the head of my husband, due to which, we have received deep injuries on our head and thereafter, the abovesaid accused has called 5 to 6 more boys in which the main accused was his brother Ankush Caste Jaat and 4-5 more boys whose names and addresses I do not know and they came there with stick, danda and after coming to our house, they started giving beatings to us and also used caste related remarks/abuses to us and told us that today you Chamaar Kamino will be killed. After the abovesaid scuffle, my mother-in-law namely Chameli, father-in-law namely Raj Kumar, my brother-in-law Pawan and my sister-in-law Preeti who are also living about two houses away from our house had came there for rescuing us and all the abovesaid accused persons also scuffled with them and also caused serious injuries with lathis and dandas to them. My



mother-in-law who is an old aged lady had been given injuries on her head and attempt has been made to kill her and they have caused injuries to the person whosoever is shown to be present in the street by the assailants in which Amit son of Dharampal, Krishan son of Nafe Singh also received injuries and they had threatened by announcing that if you Chamaar will complaint to the police then we will again come back and also set your house at fire and will ablaze. Sir, Vivek son of Kailash house is very adjacent to our house and the abovesaid accused persons used to come to his house and the abovesaid Danny has been supported by Vivek and he has enticed him to have bad eye upon my daughter. We all went to Julana Civil Hospital after we have received injuries for treatment. Doctors, after getting us medico legally examined, had sent us to Civil Hospital, Jind and had also stitched our wounds and now our treatment is going on at Jind, therefore, after registering proper FIR against the accused persons, justice may kindly be given to us. Statement is being written. Sd/- Suman Applicant Suman wife of Karambir, resident of Ward No.3 Julana.”

3. Learned counsel for the appellant has argued that the appellant has been falsely implicated in the instant case as the FIR has been registered totally on a concocted story. He further submits that the incident was recorded in the CCTV cameras of the vicinity wherein it is clearly visible that the appellant has not actively participated in the commission of crime. Furthermore, from the bare perusal of the FIR in question, no allegations of stalking or giving beating, abusing, molesting etc is made out against the appellant. Moreover, appellant himself belonged to a scheduled caste category and, thus, no offence under the said Act is made out against him. Learned counsel for the appellant has further argued that the appellant has always been willing to join investigation and extend cooperation. Thus, pre-arrest/anticipatory bail has been prayed for.

4. Learned State counsel has opposed the grant of anticipatory bail to the appellant by arguing that the allegations made against the appellant are

**CRA-S-2320-2024****4**

serious in nature. She has further submitted that appellant, who is neighbour of the victim, actively participated in the commission of the crime. The victim as also complainant (mother of the victim) in their separate statements recorded under Section 164 of Cr.P.C., 1973 have levelled specific allegations of molestation, assault and offence under SC/ST Act, 1989 against the appellant & hence the appellant ought not to be granted anticipatory bail. The State of Haryana has filed a status report dated 09.07.2024, relevant whereof reads as under:-

8. That during the course of investigation of the case, it has been surfaced that the co-accused Krishan @ Dainy sexually harassed the minor daughter of the complainant- respondent No.2 and on 04.04.2024, he alongwith co-accused including the present appellant-accused attacked upon them and others. The appellant- accused is neighborer of the victim party and belong to Scheduled Caste category. The complainant- respondent in her statement as well as statement u/s 164 Cr.P.C., Annexure R-9, has levelled specific allegations of molestation and assault against the petitioner. The appellant-accused is wanted for trial inter alia u/s 147, 149, 323, 325, 341, 354-A, 354-D, 506 of IPC and Section 3(2)(v) SC/ST Act and Section 8 of POCSO Act, which are serious in nature. Although the appellant-accused belongs to SC Category, but in view the nature and gravity of offence allegedly committed by the appellant-accused and co-accused, he is not entitled for concession of anticipatory bail. The allegations levelled in the FIR against the appellant-accused are serious. The custodial interrogation of the appellant-accused is required for sustained interrogation of the case and recovery of mobile phone from which he had called the co-accused at the time when main accused Krishan alias Danny was having quarrel with complainant party and weapon used in commission of offence is to be made from him.

5. Learned counsel for respondent No.2-complainant has strenuously opposed the present appeal by arguing that appellant has



CRA-S-2320-2024

5

committed a serious offence by abusing the complainant and therefore, the appellant does not deserve the concession of pre-arrest/anticipatory bail.

6. I have heard learned counsel for the parties and have perused the record.

7. It would be apposite to refer herein to a judgment of this Court passed in **CRA-S-3707-2023** titled as **Arvind vs. State of Haryana & anr.**, decided on 01.04.2024; relevant whereof reads as under:-

“9. The issue of maintainability of a plea for grant of anticipatory/pre-arrest bail in respect of offence(s) under 1989 Act, was considered in detail, by Hon’ble Supreme Court in case of **Subhash Kashinath Mahajan** (supra) wherein it was held that such a plea is maintainable in a case where a judicial scrutiny of the averments made by the complainant/prosecution indicates that “no prima-facie case is made out” or where the same is “prima facie false, motivated or malafide.” Pursuant to this judgment having been passed by the Hon’ble Supreme Court; the legislature inserted Section 18-A of 1989 Act with effect from 20.08.2018 which provided that the provisions of Section 438 of Cr.P.C., 1973 shall not apply to a case under 1989 Act notwithstanding any judgment, order or directions of any Court. The vires of this provisions i.e. Section 18-A of 1989 Act came up for adjudication before Hon’ble Supreme Court in the case of **Prathavi Raj Chauhan** (supra) wherein it was held; insofar as the issue of maintainability of a plea for anticipatory bail in respect of offence(s) under 1989 Act is concerned; that such a plea would be maintainable provided such applicant is able to show that no prima facie case under the Act is made out or where non-granting of such plea would result in miscarriage of justice or abuse of process of law.

9.1 The above rumination unequivocally shows that, the issue of grant of anticipatory bail in respect of offence(s) under 1989 Act, is no more a conundrum. A plea for anticipatory bail in respect of offence(s) under the 1989 Act is maintainable and can be granted provided such an applicant is able to show that no prima facie case is made out qua offence(s) under the 1989 Act; where the case of the complainant is prima facie false, motivated or malafide or in a situation where non-granting of such anticipatory bail would amount to miscarriage of justice or abuse of



process of law. There is no gainsaying that no exhaustive guidelines can possibly be laid-down to govern such judicial discretion as every case, especially a criminal case, has its own unique factual conspectus.

9.2 *More often than not, this Court comes across order(s) passed by Special Court (a Court of Sessions)/exclusive Special Court, established in terms of Section 14 of 1989 Act, wherein a plea for anticipatory bail in respect of offence(s) under 1989 Act is rejected solely on the ground of maintainability without even considering as to whether or not facts of such a case reflects a prima facie case etc. being made out or not. The ratio decidendi of the judgments of Hon'ble Supreme Court in **Subhash Kashinath Mahajan** (supra) and **Prathavi Raj Chauhan** (supra) clearly enunciate that such a plea is maintainable and can be granted albeit with additional factors to be considered while dealing with the same. In other words, a Special Court (a Court of Sessions)/exclusive Special Court cannot reject such a plea only on the ground of maintainability but has to essentially enter into the realm of adjudication on merits thereof. In case such Court finds that the parameters laid-down by the Hon'ble Supreme Court (as referred to hereinabove) are not made out, it is only then such a Court would be entitled to reject such a plea.*

9.3 *As an epilogue to above discussion, the following principles emerge:*

(I) A plea for grant of anticipatory bail/pre-arrest bail filed under Section 438 of Cr.P.C., 1973 is maintainable in respect of offence(s) alleged to have been committed under the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989.

(II) Such a plea can be granted only when judicial scrutiny of the factual matrix of such case reflects that; insofar as allegations pertaining to offence(s) under the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 are concerned; "No prima facie case is made out" or "the case is prima facie false" or "the case is motivated" or "the case is mala fide" or where "non-granting of such plea would cause miscarriage of justice or abuse of process of law". It is neither fathomable nor pragmatic to lay down any exhaustive/conclusive parameters as to what would be the touch-stone to determine these aspects in a given case as every case has its own peculiar factual matrix.

(III) A Special Court [a Sessions Court which has been duly notified as per Section 14(1) of the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989]/ an exclusive Special Court [duly established as per Section 14 the Scheduled Castes and The Scheduled



Tribes (Prevention of Atrocities) Act, 1989] is competent to adjudicate upon a plea for grant of anticipatory bail filed under Section 438 of Cr.P.C, 1973 in respect of offence(s) committed under the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989. Such Special Court/exclusive Special Court ought not to decline such a plea solely on the ground of such a plea not being maintainable in terms of statutory provisions contained in Section 18/18(A) of the Act and is rather required to delve into the merits thereof in accordance with law. While exercising its discretion, such Special Court/exclusive Special Court ought to consider the parameters enumerated hereinabove with respect to the accusations pertaining to 1989 Act.”

8. As per the allegations put forth in the FIR in question, it is indubitable that serious allegations have been levelled against the appellant. The victim is alleged to have levelled specific allegations of beatings against the appellant in her statement made under Section 164 of Cr.P.C., 1973. The appellant along with co-accused is alleged to have stalked the victim, followed her persistently and also attempted to molest and assault her. The said incident is also stated to be captured in the CCTV camera. It is befitting to mention here that while considering a plea for grant of anticipatory bail, the Court has to equilibrate between safeguarding individual rights and protecting societal interest(s). The Court ought to reckon with the magnitude and nature of the offence; the role attributed to the accused; the need for fair and free investigation as also the deeper and wide impact of such alleged iniquities on the society. It is imperative that every person in the Society can expect an atmosphere free from foreboding & fear of any transgression. At this stage, there is no material on record to hold that *prima facie* case is not made out against the appellant under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 or the appellant has



CRA-S-2320-2024

8

for the appellant that the appellant himself belonged to a scheduled caste category is of no relevance as he is alleged to have committed an offence under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 alongwith other co-accused who do not belong to Schedule Caste category. The nature and gravity of the offence, the role attributed to the appellant essentially lead to unequivocal conclusion that the appellant does not deserve the concession of anticipatory bail. It goes without saying that in the instant case, the victim has categorically stated that she was molested and assaulted by the appellant and co-accused, it is not appropriate to grant anticipatory bail, as it would necessarily cause impediment in effective investigation. Accordingly, this Court is of the considered opinion that the appellant does not deserve the concession of anticipatory bail. Moreover, custodial interrogation of the appellant is necessary for an effective investigation & to unravel the truth. The appeal is, thus, devoid of merits and is hereby dismissed.

9. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case and the investigating agency as also the trial Court shall proceed further, in accordance with law, without being influenced with this order.

10. Pending application(s), if any, shall also stand disposed of.

(SUMEET GOEL)
JUDGE

July 16, 2024
Ajay

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No