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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of Decision: 26.04.2024

Vikas Malik @ Vikash MalikAppellant

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. S.K. Garg Narwana Senior Advocate assisted by
Mr. Vishal Garg Narwana, Advocate
for the appellant.

Mr. Manish Dadwal, AAG, Haryana.

HARSH BUNGER, J. (Oral)

1. Prayer in the present appeal, filed under Section 14-A (2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is for setting aside the impugned order dated 11.10.2022, passed by learned Additional Sessions Judge, Jind.

2. On 12.10.2023 the following order was passed by this Court :-

“Prayer in the present appeal is for grant of anticipatory bail to the appellant in case FIR No. 358 dated 30.09.2022 (Annexure P-1) registered under Sections 365, 379-A, 506, 34 of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”); Section 25 of the Arms Act, 1959 and Section 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter to be referred as “the SC/ST Act”) at Police Station Sadar Narwana, District Jind, Haryana.

Briefly, FIR No. 358 was registered on the complaint of

one Parnal against four persons namely; Vikas Malik s/o Dilbagh Singh, Ramphal s/o Baruram, Amit alias Kala s/o Balwan and Manoj alias Nanha wherein the complainant stated that on 25.09.2022, he was taking rest at his house when he received a call from phone number 9306859490 and asked the complainant to come to Jind. Upon asking the unknown person about his identity, the said unknown person asked the complainant to come to Jind to find out and disconnected the phone. Thereafter, the complainant called back on the said phone number and the unknown person replied that he will call the complainant after half an hour. At 4:45 PM, four persons came to the complainant's house in car-Honda City, out of which one was his (complainant's) maternal uncle Ramphal and the other was Vikas Malik (appellant), who belongs to the Village of the Ramphal (maternal uncle of complainant). Then these persons told the complainant that they have to go to Village Farain to meet one Sandeep. They asked the complainant to accompany them and that they would drop the complainant back at his house. As per complainant, since his maternal uncle accompanied them, accordingly, he believed them and the complainant sat in the car, but after crossing Village Amargarh; Vikas Malik and his companion Amit (Appellant) snatched the phone of the complainant. Vikas Malik is alleged to have abused the complainant in the name of caste and asked the complainant to sit quietly else they will kill him. The other accused persons namely Amit and Manoj, disclosed themselves as police men of CIA Staff. Accused Amit threatened the complainant while showing a pistol to him. Thereafter, the complainant was taken to a dairy at Habitpur Road, where he was beaten by all the named accused persons and the complainant was asked to follow their instructions. It is further alleged that the accused persons took the complainant to their office at Jind in their Honda City car and asked the complainant to get the money of people invested in their fake

company by threatening that if the complainant will not act as per their instructions then he would be killed and in order to save his life, complainant agreed to everything said by accused persons, whereupon the accused person left him at Patiala Chowk and threatened the complainant by saying that they are related to Jhabbal Gang and if the complainant will not listen to them then the complainant would be killed in his house.

Learned Senior counsel appearing for the appellant has submitted that the appellant is innocent and has been falsely implicated and there is a delay of 5 days in lodging the FIR.

While referring to the FIR, learned Senior counsel for the appellant has submitted that no offence punishable under Section 3 of SC & ST Act is made out against the appellant. It is submitted that it is nowhere mentioned in the FIR that the appellant had knowledge that the complainant belonged to Scheduled Caste community. Reliance has been placed upon the judgment of Hon'ble 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.

Further reliance has been placed upon judgment of this Court in Jai Parkash and others Vs. State of Haryana and another, reported as 2011(3) RCR (Criminal) 217, to state that in case, it is not specifically averred in the FIR that the appellant had knowledge that the complainant belonged to a Scheduled Caste, then the offence would not be made out and the bar under Sections 18 and 18-A of the SC/ST Act would not operate.

Reference is also made to the judgment of Hon'ble Supreme Court in Hitesh Verma v. State of Uttarakhand, reported as 2020(4) RCR (Criminal) 868, wherein the following observation was made:

“18. Therefore, offence under the Act is not established merely on the fact that the informant is

a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste...”

It is also submitted that co-accused, Manoj was granted interim bail, which was made absolute, vide order dated 17.08.2023, passed by a Coordinate Bench of this Court in CRA-S-2129-2022. It is next submitted that appellant is not involved in any other case, accordingly, prayer for grant of anticipatory bail is made.

Learned State counsel has opposed the prayer of anticipatory bail by the appellant. While referring to the status report filed on behalf of respondent-State of Haryana, learned State counsel submitted that the appellant and the co-accused on gun point abducted the complainant and brought him in their office where the complainant was threatened and was asked to approach people for investing money in a fake company. It is further submitted that the allegations levelled in the FIR are serious in nature and allegations under the Arms Act are also levelled against the accused and in such circumstances custodial interrogation is required for the purpose of recovery of the weapon used, however, it is not disputed by State counsel that a co-accused in this case has been granted anticipatory bail.

I have heard the learned counsel for the respective parties and perused the paper book with their able assistance.

Keeping in view the aforesaid submissions of learned senior counsel for appellant in the light of the judgments referred above and also the fact that FIR was lodged after 5 days of alleged occurrence and coaccused (Manoj) having been granted anticipatory bail by a coordinate Bench and without commenting anything on the merits of the case, the appellant, namely, Vikas Malik alias Vikash Malik (in CRA-S-1840-2023) and appellant, namely, Amit (in CRA-S-1841-2023) are directed

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to join the investigation as and when required by the investigating agency. In the event of arrest of appellants, they shall be released on ad interim bail to the satisfaction of the Investigating/Arresting Officer and appellants shall abide by the terms and conditions laid down under Section 438 (2) of the Code of Criminal Procedure.

List for further consideration on 18.12.2023.

Photocopy of this order be placed on connected case file.”

3. Learned counsel for the appellant submits that pursuant to the aforesaid order, the appellant has joined the investigation.
4. Learned State counsel on instructions from Head Constable Sudhir Kumar has not disputed the aforesaid fact of joining of investigation by the appellant and submits that his custodial interrogation is not required at this stage.
5. Heard learned counsel for the parties.
6. Since the appellant has joined the investigation and his custodial interrogation is not required at this stage, the present appeal is allowed and the ad-interim order dated 12.10.2023 passed by this Court is made absolute.
7. However, the appellant shall continue to join the investigation as and when required to do so and abide by all the conditions laid down under Section 438(2) Cr.P.C.
8. It is made clear that if the appellant fails to comply with any of the bail conditions laid down under Section 438(2) Cr.P.C, the State would be at liberty to move an application for cancellation of this anticipatory bail granted to the appellant.

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9. Nothing expressed here-in-above shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for anticipatory bail at this stage.
10. The appeal is accordingly disposed of.

26.04.2024
Himani

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No