

IN THE HIGH COURT OF PUNJAB ANND HARYANA
CHANDIGARH

CRM-45450-2023 in/and
CRA-S-2069-2023(O&M
Reserved on: 28.02.2024
Pronounced on:07.03.2024

BALKOR SINGH

.....Appellant

versus

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Pankaj Garg, Advocate
for the appellant-accused

Mr. Sandeep Kumar, DAG, Punjab

Mr. Mrigank Sharma, Advocate
for the applicant-complainant

HARPREET SINGH BRAR J. (Oral)

CRM-45450-2023

The applicant-complainant namely Ramdas has approached this Court by filing the present application under Section 482 of the Code of Criminal Procedure read with Section 18 of the SC/ST (Prevention of Atrocities) Act (as amended up to date), 1989 (herein after referred to as SC/ST Act) seeking vacation of the impugned stay order dated 03.08.2023 (Annexure A-1) vide which interim bail has been granted to the appellant-accused by this Court in case arising out of FIR No.35 dated 15.03.2023 registered under Sections 323, 341 and 506 of IPC and Section 3 of the SC/ST (Prevention of Atrocities) Act, 1989 at Police Station – Sardulgarh, District Mansa.

CRA-S-2069-2023

1. The present appeal has been filed under Section 14-A of the SC/ST (Prevention of Atrocities) Act (as amended up to date), 1989, against impugned order dated 13.06.2023 passed by learned Additional Sessions Judge, Mansa vide

No.35 dated 15.03.2023 registered under Sections 323, 341 and 506 of IPC and Section 3 of the SC/ST (Prevention of Atrocities) Act, 1989 at Police Station – Sardulgarh, District Mansa.

FACTUAL MATRIX

2. Allegedly, the applicant-complainant who is a devotee (sewadar) at Dera Baba Amardas and belongs to a lower caste, was stopped on the road by the appellant-accused armed with a *daang* (stick/rod) on 13.03.2023. The appellant-accused (non-applicant), who belongs to an upper caste, after obstructing the way of the applicant-complainant, raised a *lalkara* (war cry) and used casteist slurs against him while threatening him. When the applicant-complainant tried to stop the appellant, then the appellant gave a *daang* blow upon his head which hit him on right side of his forehead (temple). Upon being hit, the applicant-complainant fell down on the ground but the appellant-accused gave another *daang* blow on his left elbow and one on his right knee. When the villagers gathered upon hearing the ruckus, the appellant-accused ran away from the spot. Thereafter, the applicant Ramdas made a complaint to the concerned police and the FIR (supra) was registered against the appellant.

3. The appellant-accused filed an application before the learned Additional Sessions Judge, Mansa, which was dismissed vide the impugned order dated 13.06.2023. Aggrieved by the same, the appellant-accused has challenged the aforesaid impugned order by way of the present appeal

4. During the pendency of the said appeal, the appellant-accused was granted interim protection by this Court vide impugned order dated 03.08.2023. Aggrieved by the same, the applicant-complainant has approached this Court by way of the present application **CRM-45450-2023**, wherein, he has challenged the impugned order dated 03.08.2023 on the grounds that the protection granted to the appellant-accused is in contravention to the SC/ST Act.

CONTENTIONS

5. The learned counsel for the applicant-complainant *inter alia* contends that as per Section 18 of the SC/ST Act, there is a specific bar against grant of concession of Anticipatory Bail and thereby, an interim bail, to the accused. It is further contended that even the main appeal preferred by the appellant-accused under Section 14-A of the SC/ST Act is not maintainable as the impugned order dated 13.06.2023, against which the said appeal has been filed, was not passed by a Special Court as envisaged under Section 14 of the SC/ST Act. It is further contended that the challan under Section 173 Cr.P.C. has not been presented yet and therefore, the provisions of Section 14-A of the SC/ST Act cannot be invoked as the same can be done only against an order passed by a Special Court/Exclusive Court during the trial.

6. Learned counsel for the applicant-complainant vociferously contends that even otherwise, the appellant-accused has violated the concession of interim protection granted to him as he has been continuously threatening the applicant as well as the eye-witness due to which proceedings have been initiated against the appellant-accused under Section 107/151 of Cr.P.C. on 29.09.2023 (Annexure A-2).

7. *Per contra* learned counsel for the appellant-accused (non-applicant) submits that the appellant is 65 years of age and suffering from various ailments due to his old age. It is further submitted that offence alleged to have been committed by him under SC/ST Act is not made out even though the fight took place on a public street, due to the fact that apart from the appellant-accused and the applicant-complainant, no one else was present there. Further submitted that he has been falsely implicated in the present case as there is an ongoing dispute between the parties with regard to the Dera. It is further contended that just abusing a person by their caste name does not amount to an offence under the SC/ST Act

unless there is intention to insult or humiliate, like in the present case and therefore, the bar contained in the Section 18 of the SC/ST Act is not applicable since no offence is made out under the said Act. He places reliance on the judgement rendered by the Hon'ble Supreme Court in **Prathvi Raj Chauhan vs. Union of India and others, (2020) 4 SCC 727.**

8. Learned State counsel has filed the status report, in compliance of the order dated 06.11.2023, by way of an affidavit of Kamaljit Singh, PPS, Deputy Superintendent of Police, Sub-Division, Sardulgarh, District Mansa. Learned State counsel refers to para no.3 and 4 of the said report and submits that the aforesaid proceedings under Section 107/151 Cr.P.C were initiated against the petitioner by some other person and not on the complaint made by the applicant-complainant. It is further submitted that as per the police record, no other FIR is found to be registered or pending against the appellant-accused Balkor Singh, apart from the present case.

ANALYSIS & OBSERVATION

9. After giving my thoughtful consideration to the submissions put forth by all sides and on careful perusal of the material on record, the question arises that whether the appeal filed by the appellant-accused before this Court under Section 14A of the SC/ST Act is maintainable or not as his application for pre-arrest bail under Section 438 Cr.P.C. was not dismissed by a Special/Exclusive Court as provided for by Section 14 of the SC/ST Act.

10. Before proceeding further, it is pertinent to mention here that the appellant-accused did not approach this Court under Section 438 Cr.P.C. and rather came in appeal under Section 14A of the SC/ST Act against the order dated 13.06.2023 passed by learned Additional Sessions Judge, Mansa vide which his application for pre-arrest bail was declined. As far as the contentions raised by the applicant-complainant qua the grant of interim protection to the appellant-accused

are concerned, the same has been answered in the judgement rendered by the Hon'ble Supreme Court in **Prathvi Raj Chauhan (supra)**, wherein, a three-judge bench speaking through Justice Arun Mishra made the following observations: -

“10. Concerning the applicability of provisions of section 438 Cr.P.C, 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. We have clarified this aspect while deciding the review petitions.

11. The court can, in exceptional cases, exercise power under section 482 Cr.P.C for quashing the cases to prevent misuse of provisions on settled parameters, as already observed while deciding the review petitions. The legal position is clear, and no argument to the contrary has been raised.”

In the concurring Judgment, it was also observed by the same bench speaking through Justice S. Ravindra Bhat that: -

“31. As far as the provision of Section 18A and anticipatory bail is concerned, the judgment of Mishra, J, has stated that in cases where no prima facie materials exist warranting arrest in a complaint, the court has the inherent power to direct a pre-arrest bail.

32. I would only add a caveat with the observation and emphasize that while considering any application seeking pre-arrest bail, the High Court has to balance the two interests: i.e. that the power is not so used as to convert the jurisdiction into that under section 438 of the Criminal Procedure Code, 1973 but that it is used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR, and further also that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. I consider such stringent terms, otherwise contrary to the philosophy of bail,

absolutely essential, because a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament.”

11. As far as the question of maintainability of the appeal filed by Balkor Singh is concerned, the same has been dealt by a Co-ordinate Bench of this Court in **Vinod Bindal vs. State of Haryana, CRM-M-57392-2022** decided on 08.12.2022, the relevant part of which is produced here as under: -

“22. Under SC/ST Act, there is special procedure and Special Courts/Exclusive Special Courts for dealing with the cases involved in the offences against the scheduled castes and scheduled tribes. A bare reading of the provisions of Sections 2(d), 2(bd) and Section 14 categorically indicates that the said offences are exclusively triable by Special Courts as contemplated by the legislature.

x x x x

25. Similarly, the Special Courts alone have jurisdiction to consider the bail applications and not the Sessions Court. It is a different matter that the Sessions Courts in Kerala are notified as the Special Courts. Notifying the Sessions Courts as Special Courts cannot derogate from the requirement of the statute, that, only the Special Court can consider the matters including applications for bail arising under the SC/ST Act.

*26. Thus, in view of the aforesaid principles enumerated above, firstly, the petitioner should have approached the Special Court for grant of anticipatory bail under Section 438 of the Cr.P.C. The order granting or rejecting the anticipatory bail under the provisions of SC/ST Act shall be amenable to the appellate jurisdiction of the High Court under Section 14A of the Act and not Section 438 Cr.P.C. In this context, I draw support from the Full Bench decision of the Allahabad High Court in **Re: Provisions of Section 14A of SC/ST (Prevention of Atrocities Amendment) Act, 2015 (2018 Cri.LJ 5010)** and the judgment of the High Court of Kerala at Ernakulam in **K.M.Basheer vs. Rajani K.T. And others, 2022 LiveLaw (Ker) 472.**”*

CONCLUSION

12. In view of the facts and circumstance of the present case as well as the above discussion, the present application CRM-45450-2023 filed by the applicant-complainant Ramdas and the appeal CRA-S-2069-2023 filed by the accused Balkor Singh are disposed of in the following terms:

(i) The appeal CRA-S-2069-2023 is held to be non-maintainable before this court as the order under challenge in the said appeal has not been passed by a Special Court as provided under Section 14 of the SC/ST Act.

(ii) However, the interim protection against arrest already granted to the appellant-accused is extended for the period of 6 weeks from the date of pronouncement of this order so as to grant him an opportunity to approach the concerned Special Court.

13. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

07.03.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>