

2024:PHHC:095974



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

238

CRA-S No.2033 of 2023
Date of decision: 25.07.2024

Pawan Kumar ... Appellant

Vs.

State of Haryana and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Devender Arya, Advocate,
for the appellant.

Mr. Neeraj Poswal, AAG, Haryana,
for the respondent-State.

Mr. Mukesh Yadav, Advocate,
for respondent No.2.

MANISHA BATRA, J. (Oral)

1. The instant appeal has been filed by the appellant against the order dated 17.07.023 passed by the Court of learned Additional Sessions Judge, Narnaul in case arising out of FIR No.132 dated 04.05.2023 registered under Sections 506 of IPC and 3 (2) (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (For short “SC&ST Act”) at Police Station City Mahendergarh District Mahendergarh whereby the prayer made by the appellant for grant of anticipatory bail had been dismissed.

2024:PHHC:095974



2. Brief facts of the case relevant for the purpose of disposal of the present appeal are that the aforementioned FIR was registered on the basis of a written complaint filed by the complainant Jaiprakash alleging therein that the Panchayat of his village had constructed a drain for drainage of dirty water. This drain passed through his house. The appellant in connivance with the co-accused Vikram got this drain closed by pouring sand on the same thereby causing danger of damage to building of his house. When the complainant tried to confront him on that point, he started hurling abuses to him. The complainant further alleged that the accused extended threats that he would not let him reside in the village and also made casteist remarks i.e. "tum chamar dedh mera kya bigad logo tum chamaro ko iss gaon mein rehne nahi dunga". After registration of FIR, investigation proceedings have been initiated and are underway. Apprehending his arrest, the appellant moved application for grant of pre arrest bail which has been dismissed by the Court of learned Additional Sessions Judge, Narnaul vide order dated 17.07.2023.

3. It is argued by learned counsel for the appellant that the order dated 17.07.2023 is not sustainable in the eyes of law as the same is not based on proper appreciation of the material placed on record. It is submitted that the allegations in the FIR are false on the face of the record and this FIR is nothing but outcome of rivalry between the members of two castes in the village. Infact, no incident as narrated in the FIR has ever taken place and he has been implicated in this case. It is

2024:PHHC:095974



further submitted that the ration depot of wife of younger brother of the appellant is located near the house of the complainant. The drain existing near his house is already in damaged condition and due to that the truck drivers who have been supplying ration in the depot of his brother's wife feel difficulty. Infact, the appellant had made request to the village Sarpanch for repair of the same but she did not pay any heed and it was the brother of the complainant who directed the co-accused Vikram to pour soil in the said drain and then the appellant was falsely implicated in this case. He is ready to join the investigation. His custodial interrogation is not required. No recovery is to be effected from him. The provisions of SC&ST Act are not attracted in the case. While passing the impugned order, the learned Additional Sessions Judge wrongly observed that the bar of Section 18 of the SC&ST Act was attracted in this case. Therefore, it is urged that the appeal deserves to be allowed.

4. Status report has been filed by respondent No.1-State. It is submitted therein and it has been argued by learned State counsel assisted by learned counsel for respondent No.2-complainant that there are specific and serious allegations against the appellant who has insulted the complainant in the name of his caste by hurling abuses to him and also criminally intimidated him. By submitting that bar of Section 18 of the SC&ST Act is certainly attracted in this case, therefore, it is argued that the appeal does not deserve to be allowed.

5. I have heard learned counsel for the parties at considerable

2024:PHHC:095974



length and have gone through the record.

6. As per the allegations, the appellant in connivance with one Vikram got the drain existing in front of the house of the respondent No.2 closed thereby causing danger of damage to his house and on resistance of the complainant, hurled abuses to him by calling names in the name of his caste and by proclaiming that he would not let him reside in the village due to his being belonging to particular caste thereby making casteist remarks. Under Sections 3 (1) (r) and 3 (1) (s) of the SC&ST Act, intentional insult or intimidation to humiliate a person belonging to Scheduled Caste within public view and abusing by caste name in any public view is punishable under the aforementioned sections as well as under Section 3 (2) (va). However, on going through the allegations as levelled in the FIR, it is apparent that neither the exact date, month and year when the complainant had been intentionally insulted or abused in the name of his caste or was extended threats, has been mentioned in the FIR nor it has been alleged that the abuses were hurled and casteist remarks were passed within public view. Though the respondent-State has placed on record a copy of statement recorded by Pinki Devi under Section 161 of Cr.P.C. to the effect that the appellant had used casteist remarks against her when she had questioned him as to why he had thrown stones into the drain, however, this Pinki Devi is none other than the wife of the complainant himself. This statement appears to be in contradiction with the allegations in the FIR itself wherein the

2024:PHHC:095974



complainant claimed that he was insulted by the appellant by making remarks relating to his caste whereas in the statment of his wife, it is mentioned that the appellant had uttered casteiest remarks towards her and did not say that he had uttered the same either in public view or qua the complainant also. As such, it is certainly a debatable question as to whether the provisions of Sections 3 (1) (r) and 3 (1) (s) of the SC&ST Act are attracted or not? Now on reading Section 3 (2) (va) of the SC&ST Act, it becomes emphatically clear that commission of offences specified in the schedule would attract an offence under Section 3 (2) (va) of the SC&ST Act. Since the question that the caste related remarks were uttered to the complainant and he was insulted by the appellant within public view are themselves in debate, therefore, no prima facie case for commission of offence punishable under Section 3 (2) (va) of the SC&ST Act can also be stated to have been made out. As such, in my considered opinion, the bar under Section 18 of the SC&ST Act would not apply. In this regard, I place reliance upon **Dr. Subhash Kashinath Mahajan v. State of Maharashtra and Another (2018) 6 SCC 454**, wherein Hon'ble Supreme Court has held 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. Accordingly, it is held in the peculiar facts and circumstances of the case that the appellant deserves to be extended benefit of pre-arrest bail.

7. Accordingly, the present appeal is allowed. The impugned

2024:PHHC:095974



order is set aside. The appellant is granted concession of anticipatory bail, subject to the conditions envisaged under Section 438(2) of Cr.P.C. This order shall also be subject to the following conditions:-

- (i) The appellant shall appear before the Investigating Officer within a period of 10 days from today and cooperate with the investigation and shall appear before the Investigating Officer as and when required.
- (ii) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any Police Officer.
- (iii) He shall not commit any similar offence while on bail.

8. In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with law.

9. It is made clear that the observations made hereinabove are only for the purpose of deciding the present appeal and the same shall not be construed as an expression of opinion on the merits of the case.

25.07.2024
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(MANISHA BATRA)
JUDGE

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