



123

... Appellants

... Respondents

Mr. Sunil Kumar Dhanda, Advocate,
for respondent No.2.

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 30.07.2024 passed by the learned Additional Sessions Judge, Panipat, whereby an application filed by them under Section 438 Cr.P.C. for grant of anticipatory bail in case arising out of FIR No. 82 dated 16.05.2024, registered under Sections 148, 149, 323, 324, 506 of IPC and Sections 3(1)(r) and 3(1)(s) of the SC/ST Act at Police Station Sadar, Panipat, had been

2024:PHHC:100991



dismissed.

2. Brief facts relevant for the purpose of disposal of this appeal are that the aforementioned FIR has been registered on 16.05.2024 on the basis of a written complaint filed by the complainant Mandeep alleging therein that on 12.05.2024 at about 7.30 P.M., when his aunt Suman was coming back from Gurudwara Sahib, Ranjeet, Anmol, Gurmukh, Rajbir, Sukhvinder and his brother and 10-15 other persons misbehaved with his aunt and used abusive words and manhandled her and stated that they would kill her nephew Mandeep i.e. the complainant. His aunt came at the house and disclosed the entire facts to them. After some time, the above said accused persons by taking weapons in their hands entered in the house and started to beat him. On hearing the noise, Panjab, Narender and Gurcharan came at the spot. The said accused persons and Diler Singh also gave injuries to them and on hearing noise of quarrel, many persons gathered there. On which, the accused persons proclaimed that on that day they were saved but they would kill them and ran away along with their respective weapons. The injured were taken to Civil Hospital, Panipat for treatment. He prayed that legal action be taken against the culprits. After registration of the FIR, investigation proceedings have been initiated and the same are going on. During investigation, the Narender Kumar, who was from the complainant party, stated that the accused persons had uttered the words *Chure*, *Kameene*, *Behanchod*. Offences under section 3(1)(r) and 3(1)(s) of SC/ST Act were added. Apprehending their arrest, the appellants have filed an application before the Court of learned Additional

2024:PHHC:100991



Sessions Judge, Panipat but the same had been dismissed, vide impugned order. Hence, the present appeal.

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 specific role or injury has been attributed to the appellants. The incident had allegedly taken place in the evening of 12.05.2024 but the complaint for registration of FIR was moved by the complainant on 13.05.2024, which shows that there is unexplained delay in reporting the matter to the police. A perusal of the FIR would show that initially there was no allegation with regard to making caste related derogatory words against anyone and it came for the first time on 22.05.2024 i.e. after about 10 days of the alleged incident. In fact, due to party fraction in the village as the wife of Diler Singh had won the elections of Sarpanch against Amandeep Kaur, who is daughter-in-law of Mangal Singh, who is the brother-in-law of the complainant Mandeep, the present FIR was got registered with ulterior motives. The provisions of Section 3 of SC/ST Act have not been attracted in this case against the appellants. Co-accused Diler Singh and Gurmukh have already been granted concession of anticipatory bail by this Court, vide order dated 23.07.2024 passed in **CRA-S-2424-2024**. The appellants are ready to join investigation. Learned Additional Sessions Judge, Panipat had wrongly observed that the provisions of Section 438 of Cr.P.C. were not attracted in view of the allegations qua commission of offences punishable under Sections 3(1)(r) and 3(1)(s) of SC/ST Act. With these broad submissions, it is argued

2024:PHHC:100991



that the present appeal deserves to be accepted and the appellants deserve to be given benefit of pre-arrest bail.

4. Notice of motion.

5. Mr. Neeraj Poswal, AAG, Haryana, who is present in Court, accepts notice of the appeal on behalf of the respondent-State. Mr. Sunil Kumar Dhanda, Advocate, who is also present in Court, accepts notice on behalf of respondent No. 2/complainant.

6. Learned State counsel, assisted by learned counsel for the complainant, has argued that there are serious and specific allegations against the appellants. The complainant and other victims have sustained multiple injuries in the incident. It is further argued that thorough investigation is required to be conducted in the matter. Even otherwise, provisions of Sections 3(1)(r) and 3(1)(s) of the SC/ST Act are fully attracted in this case, thereby creating a bar for exercising powers under Section 438 of Cr.P.C. Hence, it is urged that the present appeal is liable to be dismissed.

7. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record carefully.

8. As per allegations, the appellants along with co-accused are alleged to have manhandled and misbehaved with the aunt of the complainant and to have used abusive words against her when she was coming back from Gurudwara on 12.05.2024 at about 7.30 P.M. It is alleged that the appellants with other co-accused, armed with respective weapons, reached at the house of the complainant after some time and they opened attack on the

2024:PHHC:100991



complainant's party, in which, they received several injuries. A perusal of the contents of the FIR shows that no specific attribution has been made by the complainant towards the appellants. Even the appellants are not named in the FIR. The allegations levelled in the FIR lacks specificity. Although, several injuries were sustained by the complainant's party in the incident but as per MLR, all of them are simple in nature. More so, as per status report filed by the respondent-State, a cross case bearing FIR No. 83 dated 16.05.2024, under Sections 148, 149, 323, 452 and 506 of IPC has also been registered against the complainant party. Therefore, it would be a question to be decided by the trial Court as to which party was the aggressor party.

9. Further, with regard to allegations of the case falling within the ambit of Sections 3(1)(r) and 3(1)(s) of the SC/ST Act, it may be stated that initially there were no allegations attracting these provisions and it was only on the statement of Narender Kumar, recorded on 22.05.2024, alleging that the accused persons had uttered the words *Chure, Kameene, Behanchod* against him that the provisions of SC/ST Act were invoked. The provisions of Sections 3(1)(r) and 3(1)(s) of SC/ST Act say that any person who intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view or abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view shall be liable to be punished under these sections. Due to delay of 10 days in recording the statement by witness Narender Kumar, the possibility of false allegations having been made against

2024:PHHC:100991



the appellants and co-accused with a view to invoke the provisions of SC/ST Act cannot be ruled out. Had the appellants or any other co-accused made any caste related derogatory remarks, then it would have been recorded in the FIR at the first instance and not after 10 days of the incident. More so, the incident had admittedly taken place within the house of the complainant. Hence, it would be a matter of trial as to whether the alleged caste related words, even if assumed to have been made by the appellants, were uttered in public view or not. Therefore, no *prima facie* case for commission of offence punishable under Sections 3(1)(r) and 3(1)(s) of SC/ST Act can be stated to have been made out, thereby attracting the bar under Section 18 of SC/ST Act. 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 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.

10. Accordingly, the present appeal is allowed. The impugned order is set aside. The appellants are 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 appellants shall appear before the Investigating Officer within a period of 10 days from today and cooperate with the

2024:PHHC:100991



investigation and shall appear before the Investigating Officer as and when required.

(ii) They 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) They shall not commit any similar offence while on bail.

11. 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.

12. 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.

13. Miscellaneous application(s), if any, also stand disposed of.

(MANISHA BATRA)
JUDGE

06.08.2024
manju/waseem

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