



CRA-S-2825-2024

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH
288
CRA-S-2825-2024
Date of decision: 12th September, 2024

Braj Bhushan Dubey

...Appellant

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Manjot Gujral, Advocate for the petitioner.
(through video conferencing)

Mr. A.S. Samra, AAG, Punjab.

MANISHA BATRA, J (ORAL):-

The instant petition has been filed by appellant under Section 14 of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC/ST Act') challenging the order dated 09.08.2024 passed by the Learned Additional Sessions Judge, Jalandhar in case arising out of FIR No. 4 dated 06.01.2024 registered under Sections 295-A of IPC, 1860, (Section 3(1) (v) of SC/ST Act at Police Station Cantt Jalandhar, whereby an application for grant of pre-arrest bail as filed by the appellant has been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of this appeal are that the aforementioned FIR was got lodged by respondent No.2-complainant on the allegations that he was head of Balmiki religious society. On 30.12.2023, some members of the society sent a video on his



WhatsApp mobile number 98778-86189 wherein the appellant was shown and heard saying that the airport at Ayodhya had been kept in the name of Mahrishi Balmiki who was a dacoit. While alleging that by saying so the appellant had hurt the religious sentiments of their entire Balmiki community and that he had disseminated this speech on social media, he prayed for taking action in the matter. Initially, a case under Section 295-A of IPC was registered. Subsequently, offence under Section 3(1)(V) of the SC/ST Act had also been added. Apprehending his arrest, the appellant moved an application for grant of pre-arrest bail which was dismissed by the Court of learned Additional Sessions Judge-cum-Special Judge, Jalandhar vide order dated 09.08.2024.

3. It is argued by learned counsel for the appellant that he has been falsely implicated in this case. There was no deliberate and malicious attempt on his part to hurt the religious sentiments of any community while recording his conversation. He is a Journalist as well as a social worker. The discourse made by him was with regard to the aura of Maharishi Balmiki and not with any intention to downgrade his entity. Infact, due to personal grudge respondent-complainant No.2 has falsely implicated him in this case. The utterances made by the appellant did not fall within the mischief of Section 295-A of IPC nor the provisions of Section 3 of the SC/ST Act are attracted. He is ready to join the investigation. His custodial interrogation is not required. The learned Special Court wrongly held that the provisions of Section 438 of Code of Criminal Procedure for grant of pre-arrest bail were not attracted. With these broad submissions, it is urged that the impugned



order dated 09.08.2024, be set aside, the appeal be accepted and his prayer for grant of pre-arrest bail be allowed.

4. The respondent No.2-complainant had been duly served but there is no representation on his behalf.

5. Status report has been filed by counsel for respondent No.1-State. It is submitted therein and learned State counsel has argued that there was a *prima facie* case on record to show that the appellant with an intention to hurt the religious sentiments of members of Balmiki Community including the complainant had made a discourse on social media thereby referring to Mahrishi Balmiki as a dacoit and therefore, the provisions of Section 18 of the SC/ST Act are attracted. It is submitted that the application for grant of anticipatory bail as filed by the appellant was not maintainable and by stressing that the order passed by Special Court did not suffer from any infirmity, it is urged that the appeal is liable to be dismissed.

6. I have heard learned counsel for the appellant as well as learned State counsel at considerable length and have gone through the record carefully.

7. The allegations against the appellants are that in order to hurt the religious sentiments of members of Balmiki community at large, he made a discourse on social media platform while referring to Mahrishi Balmiki as a dacoit. A compact disc containing the recording of the discourse so made by the appellant has been placed on record and the same has been played in the Court and has been watched. The appellant has been booked for commission of offences punishable under Section 295-A of IPC



and Section 3(1)(v) of the SC/ST Act. As per Section 295-A of IPC, any person who with deliberate and malicious intention of outraging the religious feeling of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or religious beliefs of that class, is liable for punishment. This Section is attracted in case of insult or attempt to insult the religion or the religious beliefs of a class of citizens of India and not merely to those of an individual or individuals. Insult to religion offered without any deliberate or malicious intention to outrage the religious feelings of a particular class does not fall under this Section. To come within the ambit of this Section, the intent of the author/speaker must be both malicious and deliberate. Having heard the words uttered by the appellant in the discourse, this Court is of the *prima facie* opinion that no such representation had been made by the appellant on the basis of which an inference can be drawn that any deliberate and malicious intent to outrage the religious feelings of the complainant or of any class of citizens of India had been made by the appellant while making visible representation. Therefore, it is a debatable question as to whether the provisions of Section 295-A of IPC are attracted at all? It is also a question of debate as to whether in the given circumstances the provisions of Section 3(1)(v) of the SC/ST Act are also attracted or not? It is well settled by now that benefit of anticipatory bail can be granted to a person accused of commission of an offence under the SC/ST Act, if no *prima facie* case for commission of offence under this Act is made out. As per the discussion as made above, it is held that since the learned Judge



Special Court, while passing the impugned order dated 09.08.2024 did not take the above discussed facts into consideration and simply by observing that the remedy of grant of anticipatory bail was barred under Section 18 of the SC/ST Act, dismissed the application, therefore, this order is not sustainable. Accordingly, the same is set aside. The appeal is allowed and the appellant is ordered to be admitted to bail subject to his surrendering before the Investigating Officer/Arresting Officer within a period of one week.

8. Since the main appeal has been allowed, pending application, if any, is rendered infructuous.

[MANISHA BATRA]
JUDGE

12th September, 2024
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |