

2024-PHHC-110859



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

114

CRA-S-2869-2024 (O&M)
Date of decision: 28.08.2024

Dinesh Jangra ...Appellant

Versus

State of U. T., Chandigarh and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. K. D. S. Hooda, Advocate and
Ms. Himali Baweja, Advocate
for the appellant.

Mr. Manish Bansal, Public Prosecutor
for respondent No. 1-U.T., Chandigarh.

Mr. Davinder Singh, Advocate
for respondent No. 2-complainant.

MANISHA BATRA, J. (Oral)

1. CRM-33889-2024

Allowed as prayed for, subject to all just exceptions.

2. CRA-S-2869-2024 (O&M)

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 'Act, 1989'*) by the appellant challenging the order dated 20.08.2024 passed by the learned Additional Sessions Judge, Chandigarh, whereby an application filed by him under Section 482 of Bhartiya Nagarik

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Suraksha Sanhita, 2023 (*for short* 'BNSS') for grant of anticipatory bail in case arising out of FIR No. 72 dated 01.07.2024, registered under Sections 191(2), 190, 126(2), 115(2), 351(2), 351(3) of the Bhartiya Nyaya Sanhita, 2023 (*for short* 'BNS'), wherein Sections 109, 299 of BNS and Sections 3(1)(r) and 3(1)(s) of the Act, 1989 were added later on, at Police Station Sector 3, Chandigarh, had been dismissed.

3. Brief facts relevant for the purpose of disposal of this appeal are that the aforementioned FIR was registered on 01.07.2024 on the basis of the statement recorded by respondent No. 2/complainant Ranjit Singh alleging therein that he was a practicing advocate in the High Court of Punjab and Haryana. It was alleged that in a case filed against Vikas Malik and Swaran Singh Tiwana, President and Secretary of the Bar Association of this Court, respectively, summons had been issued. On the same day, he along with Advocate Anjali Kukkar and Process Server Dinesh Kumar had gone to the office of accused Vikas Malik to serve the notice/summons upon him and co-accused Swaran Singh Tiwana. Accused Vikas Malik was sitting in his office along with 7-8 persons. On seeing them, accused Vikas Malik asked Anjali Kukkar to leave his office and started misbehaving with her. The complainant intervened but he too was asked to leave the office. Then accused Vikas Malik, the appellant, Kunal Muthreja and 4-5 other persons present therein opened an assault upon the complainant by blocking his way. They gave kicks and fist blows to him and also slapped him. His turban was removed and the same was trampled under their feet. His shirt was torn off. Then by abusing the complainant in the name of his caste and proclaiming that they would kill him, all of them brought him towards the library gate

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while extending beatings. The appellant and Kunal Muthreja banged the head of the complainant against wall. Accused Vikas Malik hit his eye with a vehicle key like object and all of them kept on pouncing him with intent to kill. He was rescued by some lawyers, who were present near the library. After registration of the FIR, investigation proceedings have been initiated and are underway. During the course of investigation, offences under Sections 109, 299 of BNS and Sections 3(1)(r) and 3(1)(s) of the Act, 1989 were added. Apprehending the arrest, the appellant had moved an application for grant of anticipatory bail before the Court of learned Additional Sessions Judge, Chandigarh, which has been dismissed, vide impugned order dated 20.08.2024. Feeling aggrieved, the present appeal has been filed.

4. It is argued by learned counsel for the appellant that the impugned order dated 20.08.2024 is not sustainable in the eyes of law and is liable to be set aside as while passing the same, learned Additional Sessions Judge, Chandigarh did not take into consideration the fact that the appellant had been falsely implicated in this case. There is delay of 06 hours in registering the FIR. Vague and general allegations have been levelled against the appellant. The injuries sustained by the complainant are opined to be simple in nature and no case for making any attempt to murder the complainant has been made out on the face of the record. Rather, it has been revealed that the complainant had been pressurizing the doctor, who had conducted his medico-legal examination on 01.07.2024, to write about the nature of the injuries sustained by him. In this regard, learned counsel for the appellant has drawn attention of this Court to Annexure A-3, which is copy

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of a complaint shown to be filed by the treating doctor. It is further argued by learned counsel for the appellant that there is no specific allegation against him. The appellant did not even know about the caste of the complainant. While passing the impugned order, learned Additional Sessions Judge, Chandigarh wrongly presumed that the appellant was the office bearer of the Bar Association of this Court, whereas he is not holding any post in the Bar Association. No recovery is to be effected from him. The DVR installed in the office of the Bar Association and containing the footage of the incident is found missing but the appellant cannot be suspected of causing disappearance of the same as he is not the office bearer and there was no question of his removing the DVR or any other article from the office of the Bar Association. The observations made by learned Additional Sessions Judge, Chandigarh with regard to his causing disappearance of the DVR are based on suspicion and are without any basis. Co-accused Vikas Malik has since been extended benefit of regular bail. The provisions of Sections 3(1)(r) and 3(1)(s) of the Act, 1989 are not attracted against him. The bar under Section 18-A of the Act, 1989 is also not attracted against him in this case. He is ready to join the investigation. No useful purpose would be served by detaining the appellant into custody. With these broad submissions, it is submitted that while passing the impugned order, learned Additional Sessions Judge, Chandigarh did not take all these points into consideration and, therefore, the impugned order is liable to be set aside, the appeal deserves to be accepted and the appellant deserves to be given benefit of pre-arrest bail. To fortify his argument, learned counsel for the appellant has placed reliance upon the observations

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made by Hon'ble Supreme Court in the judgment dated 23.08.2024, delivered in Criminal Appeal No. 2622 of 2024 [arising out of SLP (Crl.) No. 8081 of 2023], titled as *Shajan Skaria vs. The State of Kerala and another*.

5. Learned Public Prosecutor has caused appearance on behalf of respondent No. 1-U.T., Chandigarh and has submitted that he is ready to argue the matter.

6. It is argued by learned Public Prosecutor that the custodial interrogation of the appellant is required for the purpose of recovery of the DVR installed in the office of the Bar Association of this Court as the same had captured the incident, but it had been removed from the spot by some unknown person. It is submitted that recovery of the DVR would help the investigating agency in conducting thorough investigation in the matter. It is further argued that the provisions of the Act, 1989 are fully attracted in the matter and learned Additional Sessions Judge, Chandigarh had rightly declined the prayer made by the appellant for grant of anticipatory bail. With these submissions, it is urged that the appeal is liable to be dismissed.

7. On the other hand, learned counsel for respondent No. 2/complainant, who has advance notice of the appeal, has argued that there are serious and specific allegations against the appellant. The complainant, who is a member of the Bar Association of this Court, had been wrongly denied access to the office of the Bar Association. He had been assaulted by the appellant and specific allegations have been levelled against him in this regard in the FIR itself, which was got registered on the day of incident itself. The DVR, which had captured the entire incident, has been found to

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be missing and the appellant, being beneficiary of the missing evidence, is likely to withhold it. The medical records are inconsistent as in the medical report, prepared after the incident, he was shown to have sustained fracture in his ribs but later on, it was reported that no bone injury was found on his person. This inconsistency suggests tampering of evidence and a complaint against the concerned doctor has been filed by the complainant. The complainant belongs to scheduled caste and has handed over his caste certificate to the Investigating Officer. The provisions of Section 18-A of the Act, 1989, which bar entertaining of anticipatory bail application in such like matter, are fully attracted in this case. The appellant along with other co-accused had not only wrongfully restrained him but had also voluntarily caused injuries to him, made an attempt to kill him by forming unlawful assembly, had done acts with intent to outrage his religious feelings and had criminally intimidated him. His custodial interrogation is required not only for the purpose of proper investigation in the matter by the police but also for effecting recovery of the DVR removed from the office of the Bar Association. The provisions of the Act, 1989 are fully attracted in this case and due to that reason also, the anticipatory bail application of the appellant was not maintainable and had been rightly rejected by learned Additional Sessions Judge, Chandigarh. While stressing that no ground has been made out for interfering with the impugned order dated 20.08.2024, it is urged that the appeal is liable to be dismissed.

8. I have learned counsel for the parties at considerable length and have also perused the material placed on record.

9. The appellant along with co-accused is alleged to have formed

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membership of an unlawful assembly and in prosecution of common object of that unlawful assembly, he is alleged to have uttered derogatory caste related words against the complainant, hurt his religious sentiments and to have caused injuries to him by wrongfully restraining and criminally intimidating him. On going through the contents of the FIR, it has been revealed that the allegations that caste related remarks had been uttered against the complainant have not been levelled against the present appellant alone but also against all the accused, 4-5 unknown persons. There is no mention in the FIR that it was the appellant, who had made any derogatory remark relating to the caste of the appellant. No doubt, as per allegations, the complainant and co-accused Kunal Muthreja had banged the head of the complainant against wall, however, from the material placed on record, it is apparent that though as per medical report, injuries were found on the person of the complainant but neither of them has been opined to be grievous in nature. The question as to whether the injuries so sustained by the complainant were inflicted with some intention to make an attempt to cause his death has to be decided only on thorough assessment of the evidence to be produced on record at the time of trial and not at this stage. So far as the allegations with regard to using derogatory caste related words against the complainant are concerned, the same lack specificity. Therefore, no *prima facie* case for commission of offence punishable under the provision of the Act, 1989 can be stated to have been made out, thereby attracting the bar under Section 18-A 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

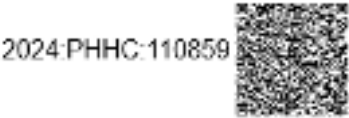
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anticipatory bail could be granted if a *prima facie* case for commission of an offence under the Act is not made out or if it can be shown that the allegations were false. Reliance can also be placed upon *Shajan Skaria's* case (supra), wherein it was observed by Hon'ble Supreme Court that the mere knowledge of the fact that the victim is a member of Scheduled Caste or Scheduled Tribe is not sufficient to attract Section 3(1)(r) of the Act, 1989. The offence must have been committed against the person on the ground or for the reason that such person is a member of Scheduled Caste.

10. So far as the question of recovery of the DVR is concerned, it has not been disputed during the course of argument that the appellant is not the office bearer of the Bar Association at the moment, though previously he was the Vice President of the same. There is nothing on record to suggest that it was the appellant, who had removed the DVR and caused disappearance of the evidence of the offence. More so, he is ready to join the investigation. In view of the discussion as made above and also keeping in view the nature of allegations, the part attributed to the appellant in the commission of subject offences, I am of the considered opinion that while passing the impugned order, learned Additional Sessions Judge, Chandigarh did not take the above discussed points into consideration. 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.

11. Accordingly, the present appeal is allowed. The impugned order is set aside. The appellant is granted concession of anticipatory bail, subject to the conditions envisaged under Section 482(2) of BNSS. He is directed to appear before the Investigating Officer within a period of 07 days from



today and join the investigation and on his doing so, the Investigating Officer/Arresting Officer shall release him on bail, subject to his furnishing personal/surety bonds to his/her satisfaction. This order shall also be subject to the following conditions:-

- (i) The appellant shall 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.
- (iv) He shall not leave the country without prior permission of the Court.

12. 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.

13. 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.

28.08.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

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