

2024:PHHC:078638



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**IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH**

**CRA-S-2059-2022 (O&M)  
Date of decision: 31.05.2024**

**Harminster Singh @ Happy** **...Appellant**

**Versus**

**State of Punjab and another** **...Respondents**

**CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Gulzar Mohammad, Advocate  
for the appellant. (Through video conferencing)

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

Mr. Sanjeev Kumar, Advocate  
for respondent No. 2.

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**MANISHA BATRA, J. (Oral)**

1. The present appeal has been filed under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (*for short 'the SC/ST Act'*) by the appellant challenging the order dated 30.09.2022 passed by the learned Additional Sessions Judge, Jalandhar, whereby an application filed by him under Section 438 Cr.P.C. for grant of anticipatory bail in case arising out of FIR No. 75 dated 22.09.2022, registered under Sections 354-A and 506 of IPC (Section 3(r)(w)(ii) of the SC/ST Act added later on) at Police Station Patara, District Jalandhar, had been dismissed.
2. Brief facts relevant for the purpose of disposal of this appeal are that the aforementioned FIR was initially lodged under Section 354-A and

506 of IPC on the basis of statement recorded by the complainant 'A' (*name withheld*) alleging therein that her husband used to do stitching and sewing work at a shop situated at her village Kanganiwal. In the morning of 22.09.2022, she was sweeping outside portion of her shop, while the appellant and his mother Harjit Kaur, were sitting outside their house which is across the road. Harjit Kaur, who was armed with a *Gandasi*, gave a *lalkara* thereby instigating her son, i.e. the appellant, to catch hold of the complainant and to disrobe her so that she could be taught a lesson for raising dispute with them. In the meanwhile, her husband also reached at the spot and prepared a video of the appellant while he was extending threats to kill the complainant and was doing obscene acts. She alleged that the cause of grudge was that previously co-accused Harjit Kaur and her younger son Harnek Singh had given beatings to her son and herself and in this regard, an FIR was registered at Police Station Patara in the year 2021, which was pending. The appellant and her mother were exerting pressure upon the family of the complainant to enter into a compromise and had been extending threats to them. Therefore, she prayed for taking action against the culprits.

3. After registration of FIR, investigation proceedings were initiated. The appellant and his Harjit Kaur were extended benefit of pre-arrest bail. However, subsequently, offence under Section 3(r)(w)(ii) of the SC/ST Act was added on the basis of the supplementary statement recorded by the complainant on 25.09.2022. Apprehending their arrest, the appellant and his mother had filed applications for grant of pre-arrest bail before the Court of learned Additional Sessions Judge, Jalandhar, which were dismissed, vide order dated 30.09.2022. His mother had filed criminal appeal bearing CRA-S-1983-2022, before a coordinate Bench of this

Court, which was allowed, vide order dated 07.10.2022.

4. It is submitted in the grounds of appeal and it has been argued by learned counsel for the appellant that the impugned order dated 30.09.2022, passed by learned Additional Sessions Judge, Jalandhar, is liable to be set aside as the appellant was previously admitted to bail for commission of offences punishable under Section 354-A and 506 of IPC. The offence under Section 3(r)(w)(ii) of the SC/ST Act has been added later on by making due deliberations and concoctions and to wreak vengeance against the appellant and his family as an FIR lodged by his family is pending against the husband of the complainant. It is argued that the provisions of Section 3(r)(w)(ii) of the SC/ST Act are not applicable to the present case. However, the Court of learned Additional Sessions Judge did not consider this aspect and committed an error in rejecting his bail application. It is also argued that the co-accused has already been extended benefit of pre-arrest of bail and on the ground of parity, he too deserves to be extended this benefit. With these broad submissions, it is argued that the impugned order be set aside, the appeal be accepted and he be granted benefit of pre-arrest bail for commission of offences under Section 3(r)(w)(ii) of the SC/ST Act which has been added subsequently. It is also argued that his custodial interrogation is not required; no recovery is to be effected from him and he is not proved to have misused the concession of bail, which was granted to him earlier, prior to addition of offence under the provisions of the SC/ST Act.

5. *Per contra*, it is argued by learned State counsel, assisted by learned counsel for the complainant, that there are serious allegations against the appellant. He had sexually harassed the complainant, who belongs to scheduled caste. The provisions of Section 3 of the SC/ST have been rightly

invoked in this case. In view of the bar available under Section 18 of the SC/ST Act, the application for grant of anticipatory bail is not maintainable and learned Additional Sessions Judge has rightly dismissed the same. Accordingly, it is urged that the appeal is liable to be dismissed.

6. I have heard learned counsel for the parties at considerable and have also gone through the record carefully.

7. It is undisputed between the parties that the appellant had been initially booked for commission of offences under Sections 354-A and 506 of IPC and had been extended benefit of bail qua the said offences. The offence under Section 3(r)(w)(ii) of the SC/ST Act was added on 25.09.2022 in view of the supplementary statement recorded on 25.09.2022 by the complainant. Copy of this supplementary statement has been placed on record as Annexure A-2 and a perusal of the same reveals that the complainant had stated that the appellant and his mother being co-villagers knew about her caste and with an intention to lower her estimation and to hurt her feelings hurled abuses to her and did obscene acts, due to which, she was made to face insult publicly and personally but this fact could not be recorded earlier due to her ill health. The question that arises for consideration is as to whether on the basis of the allegations as recorded in the supplementary statement of the complainant, a *prima facie* for commission of offence under Section 3(r)(w)(ii) of the SC/ST Act has been made out or not, attracting the bar created under Section 18 of the SC/ST Act.

8. As per Section 3(r)(w)(ii) of the SC/ST Act, whoever, not being a member of a Scheduled Caste or a Scheduled Tribe 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 uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe shall be punished under this section. Admittedly, offence under Section 3(r)(w)(ii) of the SC/ST Act was added after three days on 25.09.2022 on a supplementary statement recorded by the complainant. A perusal of this statement shows that vague and general allegations have been made. There was no specificity as to what exact words were used or what type of acts were done or what kind of sexual gestures were shown by the appellant to humiliate the complainant. More so, the allegations invoking Section 3(r)(w)(ii) of the SC/ST Act were made on 25.09.2022, i.e. after a gap of three days from the date of registration and no satisfactory explanation has been given by the complainant as to why she could not incorporate these allegations while she got registered the FIR on 22.09.2022. She had just stated that due to her bad health, she could not record her statement to that effect earlier. Though a perusal of the contents of the FIR shows that she has given every minute detail of the incident. Hence, the complainant could have recorded her statement regarding allegations invoking the provisions of SC/ST Act as well but she did not do so, which raises serious suspicion on the veracity of the same and it appears to be afterthoughts of the complainant. Therefore, no *prima facie* case for commission of offence punishable under Section 3(r)(w)(ii) of the SC/ST Act can be stated to have been made out, thereby attracting the bar under Section 18 of SC/ST Act. In ***Dr. Subhash Kashinath Mahajan v. State of Maharashtra and Another (2018) 6 SCC 454***, 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. In view of the discussion as made above, it is held in the peculiar facts and circumstances of the case that the appellant deserves to be extended benefit of pre-arrest bail.

9. Accordingly, the present appeal is allowed. The impugned order is set aside. The appellant is granted concession of pre-arrest 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 cooperate with the investigation and shall appear before the Investigating Officer within 15 days from today and thereafter as and when required. He shall furnish personal/surety bonds to the satisfaction of the Investigating Officer/Arresting Officer.
- (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.

10. 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.

11. 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.

31.05.2024  
*Waseem Ansari*

(MANISHA BATRA)  
JUDGE

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|----------------------------------|------------|
| <i>Whether speaking/reasoned</i> | <i>Yes</i> |
| <i>Whether reportable</i>        | <i>Yes</i> |