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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRA-S-3031-2024
Date of decision: 26.09.2024

Rajbir ... Appellant

Vs.

State of Haryana and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Vikas Rohal Advocate,
for the appellant.

Ms. Nidhi Garg, AAG, Haryana,
for the respondent-State.

MANISHA BATRA, J. (Oral)

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 appellant challenging the order dated 27.08.2024 passed by the learned Additional Sessions Judge, Panipat, whereby an application filed by him 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 dismissed.

2. Brief facts relevant for the purpose of disposal of this appeal are

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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, the appellant-Rajbir accompanied by Ranjeet, Anmol, Gurmukh, Sukhvinder and his brother and 10-15 other persons misbehaved with her and used abusive words and manhandled her and stated that they would kill her nephew Mandeep i.e. the complainant. On reaching home, she disclosed the entire facts to them. After some time, the above said accused persons armed with weapons entered in his house and started beating him. On hearing noises, Panjab, Narender and Gurcharan came at the spot. The appellant, co-accused and Diler Singh also gave injuries to them. On hearing the clamour, many persons gathered there and then the assailants while proclaiming to kill the complainant and his family members, ran away along with their respective weapons. The injured were rushed to hospital and were provided treatment. After registration of the FIR, investigation proceedings have been initiated and are underway. During investigation, Narender Kumar, a member of complainant party, recorded statement that the accused persons had uttered caste related abuses by calling them as “*Chure, Kameene and *****”. On his statement, offences under section 3(1)(r) and 3(1)(s) of SC/ST Act were added. Apprehending his arrest, the appellant filed an application before the Court of learned Additional Sessions Judge, Panipat but the same had been dismissed, vide the impugned order. Hence, the present appeal.

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3. The instant appeal has been filed by the appellant on the grounds and it has been argued by his counsel that he has been falsely implicated in this case. No specific role or injury has been attributed to the appellant. 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 such allegation was made for the first time on 22.05.2024 i.e. after about 10 days of the alleged incident. FIR was registered with ulterior motive and due to party fraction. The provisions of Section 3 of SC/ST Act have not been attracted in this case against the appellant. 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 appellant is ready to join investigation. Learned Additional Sessions Judge, Panipat had wrongly observed that the provisions for grant of pre-arrest bail 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 that the present appeal deserves to be accepted and the appellant deserves to be given benefit of pre-arrest bail.
4. The respondent No.2 was duly served with notice of the appeal but has not turned up.

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5. Learned State counsel has argued that there are serious and specific allegations against the appellant. The complainant and other victims have sustained multiple injuries in the incident. Thorough investigation is required to be conducted in the matter, for which, custodial interrogation of the appellant is required. 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 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (For short “BNSS”) Hence, it is urged that the present 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 also gone through the material placed on record carefully.

7. As per the allegations, the appellant along with co-accused had manhandled and misbehaved with the aunt of the complainant and 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 appellant with other co-accused, armed with weapons, reached at the house of the complainant after some time and they opened attack on the 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 appellant. The allegations levelled in the FIR lack specificity. Although, several injuries were sustained by the members of complainant in the incident but as per

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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.

8. Further, with regard to allegations as to 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 co-accused Diler Singh, Gurmukh and Onkar had uttered the words *Chure*, *xxxxx*, *xxxxx* against him that the provisions of SC/ST Act were invoked. The appellant is not alleged to have uttered any abusive words against Narender Kumar. As per the provisions of Sections 3(1)(r) and 3(1)(s) of SC/ST Act, 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 the appellant and co-accused with a view to invoke the provisions of SC/ST Act cannot be ruled out. Had the appellant or any other co-accused made any caste related derogatory remarks, then it would have been recorded

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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 appellant, were uttered in public view or not? Therefore, no *prima facie* case for commission of offences 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. Reliance can also be placed upon a recent citation of Hon'ble Supreme Court reported as **Shajan Skaria v. State of Kerala and another, 2024 SCC OnLine SC 2249**, wherein it was observed by Hon'ble Supreme Court that a duty is cast upon the Court to determine prima facie existence with a view to ensure that no unnecessary humiliation is caused to the accused. The Courts should not shy away from conducting a preliminary inquiry to determine if the narration of facts in the complaint/FIR infact discloses the essential ingredients required to constitute an offence under the SC/ST Act. It was further observed that if the accusation does not disclose the necessary ingredients of the offence on a prima facie reading, it cannot be said to be sufficient to bring into operation the bar envisaged by

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Section 18 of the SC/ST Act and holding otherwise would mean that even a plain accusation, devoid of the essential ingredients required for constituting the offence, would be enough for invoking the bar under Section 18 of the said Act.

9. On applying the above discussed position of law to the facts and circumstances of the present case, it is observed that since the allegations levelled in the FIR as against the appellant, even if accepted on the face of record do not disclose the ingredients of the offence under the provisions of SC/ST Act, on a *prima facie* reading, therefore, the bar of Section 18 of SC/ST Act, cannot be stated to be operative. The appellant is otherwise ready to join the investigation. His custodial interrogation is not required. No purpose would be served by detaining him in custody. Accordingly, the appeal is allowed. The impugned order is set aside and the appellant is granted concession of anticipatory bail, subject to the conditions envisaged under Section 482 (2) of BNSS. 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.

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(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.

26.09.2024
Parveen Sharma

(MANISHA BATRA)
JUDGE

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