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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

314+315

1. CRA-S-3628-2024 (O&M)

Udham Singh @ Mangi

...Appellant

Versus

State of Punjab and another

...Respondents

2. CRA-S-3660-2024 (O&M)

Karaj Singh

...Appellant

Versus

State of Punjab and another

...Respondents

Date of decision : 27.11.2024

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Rajnish K. Gupta, Advocate
for the appellant(s).

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

Mr. Kehar Singh Hissowal, Advocate
for respondent No.2/complainant.

MANISHA BATRA, J. (Oral)

1. This common order shall dispose of above mentioned two criminal appeals as they arise out of the same FIR and seek similar relief.
2. The present appeals have been filed under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act, 1989') by the appellants against a common order

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dated 08.10.2024 passed by the learned Additional Sessions Judge, Patiala whereby the applications filed by them under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) for grant of anticipatory bail in case arising out of FIR No. 85 dated 12.09.2024, registered under Sections 115(2), 126(2) read with Section 3(5) of Bharatiya Nyaya Sanhita, 2023 (*for short 'BNS'*) and Section 3(1) of the Act, 1989 at Police Station Ghagga, District Patiala, had been dismissed on the ground of non-maintainability of the applications.

3. Brief facts relevant for the purpose of disposal of this appeal are that the aforementioned FIR was registered on the basis of a written complaint moved by respondent No. 2/complainant on 12.09.2024 alleging therein that on 27.07.2024, at about 1:30 PM, when he was working on his computer, then appellants Karaj Singh and Udham Singh @ Mangi came to his house and called him on the gate. They asked for the key of electricity box from the complainant, to which, he stated that the key was in possession of the officials of the Electricity Board. On which, they started having an altercation with the complainant. Appellant Karaj Singh started hurling abuses to him in the name of his caste such as '*Kuteya, Chamara, main tainu jaan to maar dena hai*' and appellant Udham Singh caught hold of him from his hair and started giving beatings by inflicting fist blows and proclaimed that he would not spare him. The complainant raised rescue alarm, on hearing which, his neighbourers gathered there and saved him from the appellants. Thereafter, both of them while hurling abuses to him by calling '*Kuteya chamara*', fled away from the spot. While running away, they also extended threat to the complainant that on that

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day, he was saved but they would kill him later. After registration of the FIR, investigation proceedings have been initiated and are underway. Apprehending their arrest, the appellants had moved applications for grant of anticipatory bail before the Court of learned Additional Sessions Judge, Panitpat but the same had been dismissed by passing the impugned orders while observing that that the applications were not maintainable in view of the provisions of Section 18-A of the Act, 1989. Feeling aggrieved, the appellants have preferred the present appeals.

4. It is argued by learned counsel for the appellants that the impugned orders are not sustainable in the eyes of law and the same are liable to be set aside as the appellants have been falsely implicated in this case. The allegations do not show that the appellants had insulted/abused the complainant at any place within public view. Vague and general allegations of sweeping nature have been levelled. In fact, co-accused Karaj Singh had given a complaint on 27.07.2024 against the present complainant to the police authorities levelling allegations that he was involved in theft of electricity and the present FIR has been registered as a counter-blast to the said complaint. This finds strength from the fact that later on, a cross bearing GD No. 21 dated 14.09.2024 has been registered under Section 299 of BNS against the complainant. The appellants are ready to join the investigation. Their custodial interrogation is not required. No recovery is to be effected from them. The provisions of the Act, 1989 have not been attracted against them even *prima facie* and learned Additional Sessions Judge has wrongly observed that the applications for grant of anticipatory bail were not maintainable. With these broad

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submissions, it is argued that the present appeals deserve to be accepted and the appellants deserve to be given benefit of pre-arrest bail. To fortify his arguments, learned counsel for the appellants has placed reliance upon the authorities cited as *Shajan Skaria vs. State of Kerala and another : 2024 INSC 625, Rajinder Kaur vs. State of Punjab : 2023 (4) Law Herald 2883 and Nirottam vs. State of Haryana and another :2024 NCPHHC 91902*.

5. Learned State counsel, assisted by learned counsel for the complainant, has vehemently opposed the prayer made by the appellants by arguing that there is no infirmity or illegality in the impugned orders passed by the learned Additional Sessions Judge, Patiala. There are specific allegations that the appellants had hurled abuses to the complainant in the name of his caste and had assaulted him and had wrongfully restrained him. The provisions of the Act, 1989 are *prima facie* attracted against both the appellants. It has rightly been held by the learned Additional Sessions Judge that the applications were barred by Section 18-A of the Act, 1989. Hence, it is urged that the present appeal is liable to be dismissed.

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

7. As per the allegations, on 27.07.2024, appellant Karaj Singh had hurled abuses to the complainant in the name of his caste as mentioned above and appellant Udham Singh @ Mangi caught hold of him from his hair and started giving beatings by inflicting fist blows and proclaimed that he would not spare him. The complainant raised rescue alarm and some of

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his neighbourers reached at the spot, on which, the appellants fled away from the spot. As per further allegations, when both the accused were fleeing away from the spot, they hurled abuses to him in the name of his caste and also extended threats to his life. The complainant is a member of scheduled caste category. A perusal of the contents of the FIR reveals that a *prima facie* case is made out against the appellants for commission of offences punishable under Sections 3(1) of the Act, 1989. Undoubtedly, despite the bar created under Section 18 of the SC/ST Act that the provisions of Section 438 Cr.P.C. (*which is pari materia with Section 482 of BNSS*) are not applicable to the offences committed under this Act, this Court has extraordinary power to entertain a plea of an accused for grant of anticipatory bail even in a petition filed under Section 482 of BNSS. However, that power can be exercised, if it is revealed that no *prima facie* material exists warranting arrest of the accused in the case. Reliance in this regard can be placed upon ***Prathvi Raj Chauhan vs. Union of India and others, AIR 2020 SC 1036***, wherein the Hon'ble Apex Court considered the impact of Section 18-A of the SC/ST Act and held that as far as the provisions of Section 18-A and anticipatory bail are concerned, in case where no *prima facie* material exists warranting arrest in a complaint, the Court has inherent power to direct a pre-arrest bail. However, in the instant case, as discussed above, a *prima facie* case for commission of the aforementioned offences has been made out from the allegations in the FIR. As such, in my considered opinion, the provisions of Section 18 and 18-A of the SC/ST Act certainly apply to the present case. Therefore, anticipatory bail cannot be granted to the appellants. In this regard, reliance

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can be placed upon the judgment rendered by the High Court of Kerala in ***Abbas R. V. vs. State of Kerala and others, 2022 (5) KLT 618***, wherein similar observations have been made. The ratio of law as laid down in the authorities relied upon by learned counsel for the appellants is not disputed. However, since it is reflected from the allegations that the appellants had used derogatory caste related words against the complainant in a public view and a *prima facie* case attracting the provisions of the Act, 1989 is made out against them, the same would not apply to the peculiar facts and circumstances of the present case.

8. The well settled proposition of law is that while considering an application for grant of anticipatory bail, the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation or tampering with evidence including intimidating witnesses. The powers under Section 482 of BNSS are to be exercised in extraordinary and sparing circumstances. More so, custodial interrogation of a suspected person is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 482 of BNSS. Many useful information can be disinterred during custodial interrogation. It has also to be seen that an order of anticipatory bail does not operate as inroad in the normal legal procedure of criminal cases by the trial Court. It is also a matter of discretion to grant or not to grant pre-arrest bail.

9. In view of the discussion as made above, finding no ground to interfere with the order dated 08.10.2024, it is held that the appeals do not deserve to be accepted. Accordingly, the same are dismissed.

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10. It is made clear that the observations made hereinabove are only for the purpose of deciding the present appeals and the same shall not be construed as an expression of opinion on the merits of the case.
11. Let a photocopy of this order be placed on the file of the connected case.

27.11.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>