

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-3628-2023(O&M)
Date of decision: 29th January, 2024

Sukhwinder Singh and others
...Appellants
Versus
Kamaljit Kaur
...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. D.S. Malwai, Advocate
for the appellants.

Mr. Vipin Mahajan, Advocate
for the respondent.

MANISHA BATRA, J. (Oral)

1. The instant appeal has been filed by the appellants challenging the order dated 06.11.2023, whereby an application for grant of pre-arrest bail filed by the appellants was dismissed by the Court of learned Additional Sessions Judge, Gurdaspur on the ground that Section 18 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (*for short 'the SC/ST Act'*) created a bar for grant of anticipatory bail.
2. Brief facts of the case relevant for the purpose of disposal of the present appeal are that the respondent had filed a complaint against the present appellants alleging therein that her husband has been allotted a five Marla plot by the Gram Panchayat of the village. The appellant No.4- Randhir Singh, who has no right, title or interest over the above said plot,

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along with the other appellants tried to encroach upon the plot owned by her husband in the evening of 24.07.2017 and started ploughing the same with a tractor which was driven by the appellant No.1. Coming to know about this fact, the respondent along with some other persons who were also allottees of the adjacent plots rushed towards the plot and requested the appellants not to encroach upon the same. However, the appellants who are co-villagers and know that the respondent belongs to Schedule Caste being Majhabi Sikh, started abusing her in the name of caste and insulted her with derogatory language by saying that “*IS CHURI MAZBAN NU SANU THEKE TE LAI PANCHAYAT THE JAMIN VAHUN TON ROKAN DA MAZA DAS DEO*”. She further alleged that appellant No.2 caught hold of her from neck whereas she was assaulted by appellant No.1 and the appellant No. 3 tried to outrage her modesty by tearing of her shirt. She raised alarm, on hearing which, several persons had gathered at the spot and rescued her from the clutches of the present appellants. She further alleged that while going, the appellants had proclaimed that they would force the respondent to leave the village and also extended threat to kill her. It was also alleged that she had reported the matter to the police but since no action was taken by the police, therefore, she was constrained to file a private complaint before the Court.

3. On presentation of the complaint, opportunity was granted to the respondent to produce preliminary evidence and then the present appellants were directed to be summoned to face trial for commission of offences punishable under Sections 148, 323, 354, 506 read with Section

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149 of IPC as well as under Sections 3 of the SC&ST Act.

4. The appellants had filed an application for grant of pre-arrest bail before the concerned Court and by passing the impugned order and holding that the application for grant of bail did not deserve to be allowed on merits as well as on the point of maintainability, the same has been dismissed.

5. It is submitted in the ground of appeal and learned counsel for the appellants has argued that they have been falsely implicated in this case. In fact, the appellant No.1 Sukhwinder Singh has got registered an FIR bearing No. 60 dated 07.08.2017 as against the husband of the respondent for commission of offence under Section 326 of IPC and as a pressure tactic, this complaint had been filed by the complainant. It is also submitted that the caste certificate of the respondent has not been proved in accordance with law before the concerned Court and therefore, it cannot be stated that she belongs to SC category and therefore, no case for commission of offence punishable under the provision of the SC/ST Act has been made out against them. It is also submitted that their bail application has been dismissed in view of the bar created under Section 18 of the SC/ST Act. The custodial interrogation of the appellants is not required. The allegations under Section 3 of the SC/ST Act are not made out. The husband of the complainant is not proved to be belonging to SC/ST category and the respondent being his wife, the provisions of the SC/ST Act are not attracted. Hence, it is argued that the appeal deserves to be allowed.

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respondent that undoubtedly, her husband belongs to backward class as shown in the document Exhibit A-7 whereby plots were allotted to landless labourers but this fact does not make any difference as the respondent herself being a Majhabi Sikh belongs to SC category and only by performing marriage with a person who belongs to BC category, her caste is not automatically changed/converted in the caste of her husband. In this context, reliance has been placed upon '*Rajindera Srivastava vs. State of Maharashtra*' wherein a Full Bench of High Court of Bombay has observed so. It is further argued that the learned Trial Court had rightly dismissed the application for grant of pre-arrest bail of the appellants as the provisions of 438 Cr.P.C. are not applicable to a case under the provisions of SC&ST Act. With these broad arguments, it is submitted that there is no merit in appeal and the same is liable to be dismissed.

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

8. The appellants herein have been summoned in a private complaint case. Apart from the offences which pertain to the provisions of Indian Penal Code, they have also been summoned to face trial under Section 3 of the SC/ST Act. It is well settled proposition of law that Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been *prima facie* made out or not. In other words, if there is a specific

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averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail. The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no Court shall entertain application for anticipatory bail, unless it *prima facie* finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. The Court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence. In the instant case, a perusal of the allegations levelled in the complaint shows that a *prima facie* case for commission of the aforementioned offences has been made against the appellants. As such, in my considered opinion, the provisions of Section 18 and 18-A of the SC/ST Act would certainly apply to the present case. Therefore, the anticipatory bail cannot be granted to the appellants. In this regard, reliance 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.

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be stated that by declining the prayer made by the appellants for grant of pre-arrest bail, the learned trial Court had committed any illegality or this order is not sustainable in the eyes of law. However, keeping in view the fact that the appellants are ordered to be summoned to face trial in a private complaint case where custodial interrogation of the appellants would not be required as nothing is to be recovered from them, I hereby dispose of this appeal with a direction that in case the appellants surrender before the trial Court within a period of fifteen days or on or before the date fixed and apply for grant of regular bail, the trial Court shall dispose of the same expeditiously preferably, on the day of filing of such application, while taking into account the above mentioned facts.

[MANISHA BATRA]
JUDGE

29th January, 2024
Waseem Ansari/Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |