

117 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-3633-2023 (O&M)

Date of Decision: 26.02.2024

DEVENDER KUMAR

.....APPELLANT

Vs.

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. J.P. Dhull, Advocate,
for the appellant.

Mr. Amrik Singh Narwal, D.A.G. Haryana.

Mr. Abhimanyu Batra, Advocate,
for the complainant.

HARPREET KAUR JEEWAN J.

1. The present appeal has been filed by the appellant assailing the order dated 30.11.2023 passed by the learned Additional Sessions Judge, Special Court for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act, 1989, (for short *the 'Act of 1989'*), Kurukshetra, whereby the bail application filed under Section 438 of the Code of Criminal Procedure, 1973 (for short *'the Code'*) for grant of anticipatory bail to the appellant in FIR No. 454, dated 29.06.2023, under Sections 323, 354, 506 and 509 of the IPC read with Section 34 thereof and Sections 3(1) (S), 3 (i), (W) (i & ii) of the Act of 1989, registered at Police Station Sadar, District Thanesar, has been dismissed.

2. As per the prosecution case, the complainant Shakti Singh purchased a plot measuring 300 square yards from the appellant for a total consideration of ₹12,00,000/-. The entire amount was paid to the appellant

and possession of the plot was delivered to the complainant. The appellant again sold the same plot, i.e. Plot No. 27 and 28 to Munshi Lal (co-accused of the appellant) in connivance with Mohan Lal and they tried to take possession of the plot. The complainant came to know and reached at the spot and found that some persons were constructing the boundary wall over the plot. On 29.06.2023 at about 12:30 p.m., the appellant came to the plot, he was armed with pistol and he started abusing the complainant and his family members and also used bad words regarding the caste of the appellant. The appellant along with his co-accused gave beatings to Naveen Singh, who is the brother of the complainant. The injured suffered two injuries from the hands the appellant and on receiving copy of the MLR from the hospital, the present FIR was registered.

3. Learned counsel for the appellant *inter alia* contends that the appellant was telephonically called by the complainant at the spot and he has never abused the complainant by the name of his caste. No one has heard and seen any such words as alleged by the complainant, as such, the offence under the provisions of the Act of 1989 is not made out and the bar of Sections 18 and 18-A of the Act of 1989 is not applicable to his case.

4. It is further contended that the present FIR is a counter-blast to FIR No. 0482, dated 07.07.2023, under Sections 323 and 506 of the IPC read with Section 34 thereof, registered at Police Station Thanesar, District Kurukshetra (Annexure A-3) against the complainant and his brother at the instance of the present appellant. The appellant is ready to join the investigation.

5. Counsel for the appellant further contends that the trial Court did not appreciate the facts and circumstances of the case while dismissing the application filed by the appellant.

6. The counsel for the State and counsel for the complainant have opposed the bail on the ground that the allegations are serious in nature, as such, the impugned order has been rightly passed.

7. I have considered the aforesaid contentions.

8. It is a case of version and cross-version. As per the version of the prosecution, Naveen Singh (brother of the complainant) had sustained injuries from the hands of the appellant and both the injuries are “complain of pain” and having no external injuries as per medico-legal report of Naveen Singh (Annexure R-1).

9. *Per contra*, the appellant has also lodged the FIR (Annexure A-3) with allegations that he was telephonically called by the complainant Shakti Singh and when he reached the spot, the complainant became aggressive and took a revolver from his uncle and put it on him and started giving threats to kill him. It is also in allegations that the complainant gave a blow with reverse side of the revolver on the eyes of the appellant. Resultantly, the appellant fell down and thereafter the accomplish of the complainant gave beatings to him. The appellant has given a detailed representation dated 27.06.2023, to the Senior of Police, Kurukshetra (Annexure A-2) along with a copy of the medico legal report from the CHC Mathana on the basis of which FIR (Annexure A-3) was registered against the complainant Shakti Singh and others.

10. The version and counter-version of the complainant and the appellant are subject matter of trial. The allegations against the appellant regarding abusing the complainant by the name of his caste are not alleged to be in public view. Moreover, the occurrence took place on account of the dispute with regard to the possession of a plot regarding which the complainant is alleged to have paid the entire consideration amount so there is *prima facie* absence of intention to humiliate the complainant being a member of specific caste regarding the payment and possession of the said plot.

11. No doubt there is a bar to the applicability of Section 438 of the Code to the cases under the Act of 1989, in view of the provisions of Sections 18 and 18-A of the Act, which read as under:-

“18. Section 438 of the Code not to apply to persons committing an offence under this Act.- Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.

18-A No enquiry or approval required.-- (1)

For the purpose of this Act

(a) preliminary enquiry shall not be required for registration of a First Information Report against any person; or

(b) the investigating officer shall not require approval for the arrest, if necessary, of any person.

Against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply.”

12. However, Hon'ble the Apex Court in Prathvi Raj Chauhan vs. Union of India and others (2020) 4 SCC 727, has held that in cases where *prima facie* case is not made out, anticipatory bail can be granted in appropriate circumstances, with a cautious exercise of power. Sections 18 and 18-A of the Act of 1989 have no application where *prima facie* case is not made out. The relevant portion of the judgment reads as under:-

11. Concerning the applicability of provisions of section 438 Cr.PC, it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A (i) shall not apply. We have clarified this aspect while deciding the review petitions.

12. The court can, in exceptional cases, exercise power under section 482 Cr.PC for quashing the cases to prevent misuse of provisions on settled parameters, as already observed while deciding the review petitions. The legal position is clear, and no argument to the contrary has been raised.

13. Hon'ble the Apex Court in Hitesh Verma vs. State of Uttarakhand and another 2020 (4) RCR (Criminal) 868, also held that the offence under the Act of 1989 is not established merely on the fact that informant is a member of Scheduled Caste unless there is an intention to humiliate a member of a specific caste. The following observations were made by Hon'ble the Apex Court:-

18. Therefore, offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the

property. If such person happens to be a Scheduled Caste, the offence under [Section 3\(1\)\(r\)](#) of the Act is not made out.

14. Keeping in view the facts and circumstances of the case, there are no contention that the alleged words were used in a public place or that there was an intention to insult the complainant. The main dispute is with regard to the possession and transfer of title of a plot regarding which the complainant has allegedly made the payment of the entire consideration amount to the appellant. As such, the bar of Section 18 and 18-A of the Act is not applicable to the facts of the present case.

15. Consequently, the impugned order passed dated 30.11.2023 passed by the learned Additional Sessions Judge, Special Court for Act of 1989, Kurukshetra, is liable to be set aside. The appeal is allowed. The impugned order is set aside. The appellant is directed to comply with the following conditions:-

“(i) The appellant is directed to join the investigation within a period of 10 days and thereafter as and when required, in that event he shall be released on bail upon his furnishing bail bonds for a sum of ₹2,00,000/- with two sureties in the like amount to the satisfaction of the Arresting Officer/SHO concerned.

(ii) That the appellant 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 from disclosing such facts to the Court or to any police officer.

(iii) That the appellant shall not leave India without the prior permission of the Trial Court/CJM concerned.”

16. Liberty is reserved in favour of the State/complainant to move for cancellation/recall of the order in case the appellant violates any condition stipulated in this order or upon showing any other sufficient cause.

17. It is made clear that nothing stated above hereinabove shall be construed as an expression of opinion on the merits of the case and the trial Court would proceed independently on the basis of evidence led/gathered before it. The observations made in the present case are only for the purpose of adjudicating the present bail application/appeal.

18. Pending miscellaneous application (s), if any, shall also stand disposed of.

February 26, 2024
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(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes
Whether reportable	No