

CRA-S-3707-2023
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 01.04.2024

(1) CRA-S-3707-2023

Arvind
V/s
State of Haryana & another

..... Appellant
..... Respondents

(2) CRA-S-214-2024

Pardeep alias Kala
V/s
State of Haryana & another

..... Appellant
..... Respondents

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Keshav Partap Singh, Advocate for appellant
(in both cases)
Ms. Priyanka Sadar, AAG Haryana.
Mr. Rajesh Goyal, Advocate for respondent No.2-complainant
(in both cases)

SUMEET GOEL, J.

1. Vide this common order/judgment, afore-mentioned two appeals arising out of the same FIR, in which grant of anticipatory bail herein is sought for, are being disposed of.
2. The afore-mentioned two appeals have been filed under Section 14-A of the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 (*hereinafter to be referred as 1989 Act*) impugning the order dated 04.12.2023 whereby the plea made by the appellant(s) (herein) for grant of pre-arrest/anticipatory bail in FIR No.381 dated

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12.09.2023, under Sections 148, 149, 323, 325, 354-B, 506 of IPC and Section 3(1)(s)/3(2)VA of 1989 Act was declined.

3. The translated version of abovesaid FIR (as stated in the appeal) reads as under:-

“Copy of complaint is as follows: - To, the SHO, P.S. Tehsil Camp., Panipat. Subject: Complaint regarding an attack with intention to kill, against Kala, Arvind Kumar and other 15-20 unknown boys and for taking strict legal action. Sir, it is requested that I, Suman wife of Sh. Ram Kumar, Caste Chamar, am resident of Moti Ram Colony, Noorwala, Panipat. On 08.09.2023 at about 08:30 PM, I had gone to the house of Raj Kumar on the occasion of birthday of his granddaughter Joyashi. At that time Kala who is doing finance work, had come to demand money from the son of my Jeth, then he stated that today there is birthday of his niece; therefore, he would give his money later on. On hearing this, Kala had become furious and while shouting started abusing by uttering – Dhedh, Kameene and gave many slaps on his mouth and after going out he made phone call, then 15-20 Gunda type of young persons armed with weapons reached there, who were having iron rods, Bindas, Swords, Knives etc. in their hand and they, on coming with intention to kill us, opened assault upon us and had tore my clothes. Arvind and Kala inflicted leg blows on my abdomen and opened assault upon me with iron rod. In this the accused had thrown bricks at us and assaulted with weapons, in which other members of the family had also suffered injuries and caused huge damage to the house. Then gathered and on seeing them, accused while going from there started abusing by uttering – Dhedh, Kameen, Chamaron, today you have been saved, again in future after finding opportunity we would kill you. After this, Kapinder and nearby neighbours brought me to Civil Hospital, where the Doctors keeping in view my serious condition, had referred me to PGI, Rohtak, but on account of oozing excess blood, the family members got me admitted in Ravindra Hospital, Panipat, where my treatment is going on. It is prayed to your goodself that after taking legal action against the accused, I may be provided justice. I shall be highly obliged to your goodself. Sd/ Suman, Applicant – Sd/- Suman wife of Shri Ram Kumar, Caste Chamar, Moti Ram Colony, Noorwala, Panipat 88140772060, dated 12.09.2023..... Police proceedings.”

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4. Learned counsel for the appellant has argued that the appellant(s) have been falsely roped in on account of a money dispute between the parties and the allegations relating to 1989 Act have been made malafidely so as to give a more serious colour to the dispute between the parties. Learned counsel for the appellant(s) has further argued that the appellant(s) have always been willing to join investigation and extend cooperation. Thus, pre-arrest/anticipatory bail has been prayed for.

5. The interim anticipatory bail was extended to the appellant(s), vide orders dated 10.01.2024 and 18.01.2024 respectively, passed by this Court. Learned State Counsel has submitted that the appellant(s) have joined investigation and are not required for custodial interrogation. However, learned State counsel has opposed the grant of anticipatory bail to the appellant(s) by arguing that the allegations made against the appellant(s) are serious in nature & hence the appellant(s) ought not to be granted anticipatory bail.

6. Learned counsel for respondent No.2-complainant has strenuously opposed the present appeal by arguing that the 1989 Act postulates that Section 438 of Cr.P.C., 1973 does not apply to any case involving the arrest of any person on an accusation of having committed an offence under the 1989 Act & hence the plea made by the appellant(s)-accused for grant of anticipatory bail is not maintainable. Learned counsel has further argued that the appellant(s) have committed a serious offence by abusing the complainant-side by caste names as also have molested the complainant and, therefore, the appellant(s) do not deserve the concession of pre-arrest/anticipatory bail.

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6. The prime issue for determination in the present appeal is as to whether the appellant(s) ought to be granted pre-arrest/anticipatory bail in the facts & circumstances of the case. The analogous legal issue that arises for consideration is as to whether a plea for anticipatory/pre-arrest bail is maintainable in respect of offence(s) alleged to have been committed under The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 in view of Section 18 and 18A of this Act.

7. Relevant statutory provisions:

The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989:

“18. Section 438 of the Code not to apply to persons committing an offence under the 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 purposes 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.

(2) The provisions of section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court.]

8. Relevant Case Law:

The case-law, *apropos*, to the issue(s) in question is as follows:

(i) Hon’ble the Supreme Court in a judgment titled as ***Dr. Subhash Kashinath Mahajan Vs. State of Maharashtra and Anr., 2018(2) RCR (Criminal) 552***, has held as under:

“58. In the present context, wisdom of legislature in creating an offence cannot be questioned but Individual justice is a judicial function depending on facts. As a policy, anticipatory bail may be excluded but exclusion cannot be intended to apply where a patently mala fide version is put forward. Courts have Inherent jurisdiction to do justice and this jurisdiction cannot be intended to be excluded. Thus, exclusion of Court's jurisdiction is not to be read as absolute.

59. *There can be no dispute with the proposition that mere, unilateral allegation by any individual belonging to any caste, when such allegation is clearly motivated and false, cannot be treated as enough to deprive a person of his liberty without an independent scrutiny. Thus, exclusion of provision for anticipatory bail cannot possibly, by any reasonable interpretation, be treated as applicable when no case is made out or allegations are patently false or motivated. If this interpretation is not taken, it may be difficult for public servants to discharge their bona fide functions and, in given cases, they can be black mailed with the threat of a false case being registered under the Atrocities Act, without any protection of law. This cannot be the scenario in a civilized society. Similarly, even a non public servant-can be black mailed to surrender his civil rights. This is not the intention of law. Such law cannot stand judicial scrutiny. It will fall foul of guaranteed fundamental rights of fair and reasonable procedure being followed if a person is deprived of life and librt. Thus, literal interpretation cannot be preferred in the present situation.*

60. Applying the above well known principle, we hold that the exclusion of Section 438 Cr.P.C., 1973 applies when a prima facie case of commission of offence under the Atrocities Act is made. On the other hand, if it can be shown that the allegations are prima facie motivated and false, such exclusion will not apply.

xxxx xxxx xxxx xxxx

Conclusions

83. *Our conclusions are as follows:*

xxxx xxxx xxxx xxxx

There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide. We approve the view taken and approach of the Gujarat High Court in Pankaj D. Suthar (supra) and Dr. N.T. Desai (supra) and clarify the judgments of this Court in Balothia (supra) and Manju Devi (supra). ”

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(ii) A three Judges Bench of Hon’ble Supreme Court in judgment titled as “**Prathvi Raj Chauhan Vs. Union of India & Ors.**”, 2020 (4) SCC 727, has held as under:

“As per Arun Mishra, J.:

“10. 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.”

As per S. Ravindra Bhat, J.:

“31. As far as the provisions of Section 18A and anticipatory bail is concerned, the judgment of Mishra, J, has stated that in cases where no prima facie materials exist warranting arrest in complaint, the court has the inherent power to direct a pre-arrest bail.

32. I would only add a caveat with the observation and emphasize that while considering any application seeking pre-arrest bail, the High Court has to balance the two interest: i.e. that the power is not used as to convert the jurisdiction into that under section 438 of the Criminal Procedure Code, 1973 but that it is used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR, and further also that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. I consider such stringent terms, otherwise contrary to the philosophy of bail, absolutely essential, because a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament.”

Analysis (re law)

9. The issue of maintainability of a plea for grant of anticipatory/pre-arrest bail in respect of offence(s) under 1989 Act, was considered in detail, by Hon’ble Supreme Court in case of **Subhash Kashinath Mahajan** (supra) wherein it was held that such a plea is maintainable in a case where a judicial scrutiny of the averments made by the complainant/prosecution indicates that “no prima-facie case is made

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out” or where the same is “prima facie false, motivated or malafide.” Pursuant to this judgment having been passed by the Hon’ble Supreme Court; the legislature inserted Section 18-A of 1989 Act with effect from 20.08.2018 which provided that the provisions of Section 438 of Cr.P.C., 1973 shall not apply to a case under 1989 Act notwithstanding any judgment, order or directions of any Court. The vires of this provisions i.e. Section 18-A of 1989 Act came up for adjudication before Hon’ ble Supreme Court in the case of **Prathavi Raj Chauhan** (supra) wherein it was held; insofar as the issue of maintainability of a plea for anticipatory bail in respect of offence(s) under 1989 Act is concerned; that such a plea would be maintainable provided such applicant is able to show that no prima facie case under the Act is made out or where non-granting of such plea would result in miscarriage of justice or abuse of process of law.

9.1 The above rumination unequivocally shows that, the issue of grant of anticipatory bail in respect of offence(s) under 1989 Act, is no more a conundrum. A plea for anticipatory bail in respect of offence(s) under the 1989 Act is maintainable and can be granted provided such an applicant is able to show that no prima facie case is made out *qua* offence(s) under the 1989 Act; where the case of the complainant is prima facie false, motivated or malafide or in a situation where non-granting of such anticipatory bail would amount to miscarriage of justice or abuse of process of law. There is no gainsaying that no exhaustive guidelines can possibly be laid-down to govern such judicial discretion as every case, especially a criminal case, has its own unique factual conspectus.

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9.2 More often than not, this Court comes across order(s) passed by Special Court (a Court of Sessions)/exclusive Special Court, established in terms of Section 14 of 1989 Act, wherein a plea for anticipatory bail in respect of offence(s) under 1989 Act is rejected solely on the ground of maintainability without even considering as to whether or not facts of such a case reflects a prima facie case etc. being made out or not. The ratio decidendi of the judgments of Hon' ble Supreme Court in ***Subhash Kashinath Mahajan*** (supra) and **Prathavi Raj Chauhan** (supra) clearly enunciate that such a plea is maintainable and can be granted albeit with additional factors to be considered while dealing with the same. In other words, a Special Court (a Court of Sessions)/exclusive Special Court cannot reject such a plea only on the ground of maintainability but has to essentially enter into the realm of adjudication on merits thereof. In case such Court finds that the parameters laid-down by the Hon' ble Supreme Court (as referred to hereinabove) are not made out, it is only then such a Court would be entitled to reject such a plea.

9.3 As an epilogue to above discussion, the following principles emerge:

(I) A plea for grant of anticipatory bail/pre-arrest bail filed under Section 438 of Cr.P.C., 1973 is maintainable in respect of offence(s) alleged to have been committed under the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989.

(II) Such a plea can be granted only when judicial scrutiny of the factual matrix of such case reflects that; insofar as allegations pertaining to offence(s) under the Scheduled Castes and The

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Scheduled Tribes (Prevention of Atrocities) Act, 1989 are concerned;

“*No prima facie case is made out*” or “*the case is prima facie false*” or “*the case is motivated*” or “*the case is malafide*” or where “non-granting of such plea would cause *miscarriage of justice or abuse of process of law*” . It is neither fathomable nor pragmatic to lay down any exhaustive/conclusive parameters as to what would be the touch-stone to determine these aspects in a given case as every case has its own peculiar factual matrix.

(III) A Special Court [a Sessions Court which has been duly notified as per Section 14(1) of the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989]/ an exclusive Special Court [duly established as per Section 14 the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989] is competent to adjudicate upon a plea for grant of anticipatory bail filed under Section 438 of Cr.P.C, 1973 in respect of offence(s) committed under the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989. Such Special Court/exclusive Special Court ought not to decline such a plea solely on the ground of such a plea not being maintainable in terms of statutory provisions contained in Section 18/18(A) of the Act and is rather required to delve into the merits thereof in accordance with law. While exercising its discretion, such Special Court/exclusive Special Court ought to consider the parameters enumerated hereinabove with respect to the accusations pertaining to 1989 Act.

Analysis re facts

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10. Now this Court reverts to the facts of the present appeal.

10.1 As per the allegations put forth in the FIR in question, the genesis of the dispute between the parties appears to be a monetary one. Indubitably, there are allegations of uttering caste related words against the appellants but there is a background of money dispute between the parties. At this stage, it cannot be altogether ruled out that the allegations pertaining to the 1989 Act are not motivated or malafide. Further the incident is alleged to have taken place on 08.09.2023 whereas the FIR in question was registered on 12.09.2023. The refuge taken, on behalf of the complainant-respondent No.2, to explain the delay is not free from suspicion in view of the injuries stated to have been suffered by her in the said incident. No such material has been brought forward to indicate that the appellants were, in some way or the other, aware of the caste of the complainant-side. The injuries attributed to the appellants have been described to be attracting the offence of Section 325 of IPC as per the stand of the State of Haryana, which offence is bailable in nature. Further, the question of mens-rea vis-à-vis the offence of Section 354-B of IPC in an altercation/fight of the nature alleged in the FIR will be a matter of investigation/trial.

10.2 Vide order dated 10.01.2024, interim anticipatory bail was granted to the appellant-Arvind and vide order dated 18.01.2024, interim anticipatory bail was granted to Pardeep alias Kala. The learned State counsel, upon instructions, has submitted that the appellants have joined investigation and are not required for custodial interrogation. This aspect of the matter may not be sufficient, by itself, for making absolute the interim

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anticipatory bail earlier granted to the appellants but it certainly goes a long way in favour of the appellants.

11. In view of above, the present appeals are allowed and interim orders dated 18.01.2024 and 10.01.2024 passed by this Court are made absolute, subject to the conditions as enumerated under Section 438(2) Cr.P.C.

12. This order should not be treated as “blanket” order. It will not be interpreted as granting appellant(s) indefinite protection from arrest. It shall be confined to the FIR mentioned *ibid* and will not operate in respect of any other incident that involves commission of an offence.

13. Liberty is reserved in favour of State/complainant to move for cancellation/recall of this order in case the appellant(s) violate any condition stipulated under Section 438(2) Cr.P.C., 1973 or upon showing any other sufficient cause.

14. Needless to say that anything observed herein above shall not be construed to be an opinion on the merits of the case.

(SUMEET GOEL)
JUDGE

April 01, 2024
Ajay

Whether speaking/reasoned:	Yes
Whether reportable:	Yes