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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **BAIL APPLN. 3471/2023**

**DR. AVADESH KUMAR**

..... Petitioner

Through: Ms. Suchita Dixit and Mr.  
Madhusudhan Agnihotri, Advocates.

versus

**STATE OF NCT OF DELHI**

..... Respondent

Through: Mr. Nawal Kishore Jha, APP for State  
with Inspector Rajpal PS Wazirabad,  
Delhi.  
Ms. Shivangi Sharma and Mr.  
Harshvardhan Jain, Advocates for  
complainant.

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**ORDER**

**18.03.2024**

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1. The present application has been filed under Section 438 Cr.P.C. seeking anticipatory bail in FIR No.904/2023 registered under Section 376 IPC at P.S. Wazirabad, Delhi. Subsequently, Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 ('SC/ST Act') also came to be added.

2. Learned counsel of the petitioner/applicant states that the applicant has been falsely implicated in the present matter. It is submitted that the complainant and applicant have known to each other since 2018 and the same is evidenced from the WhatsApp chats which have been placed on record. He states that in the FIR, it has been alleged that the applicant enticed the complainant with a false promise to marry, however, the same is



not tenable considering that the complainant was well aware of the marital status of the applicant inasmuch as the applicant had invited the complainant and her family to his marriage. He submits that though the alleged incident is stated to have taken place on 03/04.04.2023, the same came to be reported by way of detailed written complaint to the SHO, P.S. Wazirabad only on 13.09.2023 i.e. after a delay of almost 122 days. Insofar as the bar under Section 18 SC/ST Act whereby Section 438 Cr.P.C. has been made inapplicable in matters under SC/ST Act, is concerned, it is submitted that there is no absolute bar to the said relief of anticipatory bail and reference in this regard has been made to the Supreme Court decisions in Prathvi Raj Chauhan v. Union of India & Ors. reported as **(2020) 4 SCC 727** and the decision of this Court in Suraj Singh v. Govt. of NCT of Delhi (Neutral Citation: **2021:DHC:3385**). He further states that insofar as the casteist remarks are concerned, even as per the prosecution case, the same have been made in private and there are no public witnesses to the same.

3. The bail application is vehemently opposed by learned APP for the State, who states that the offence is grave and serious in nature. He submits that the medical examination of the complainant was conducted and upon a perusal of the MLC, offence under Section 376 IPC was found to have been committed. It is further submitted that the complainant has consistently supported the prosecution case inasmuch as in her Section 164 Cr.P.C. statement, the complainant has supported the initial version of her statement. In her statement, the complainant has provided details of the entire factual situation including the casteist remarks made by the applicant and has also informed that she has been receiving threats. The initial omission of provisions of SC/ST Act has been explained on account of the inability to



verify the caste of the complainant, wherein upon verification, the provision of SC/ST Act came to be added. Lastly, in view of Section 18 of the SC/ST Act, there exists a bar upon the grant of anticipatory bail in matters wherein the SC/ST Act is invoked.

4. I have heard learned counsels for the parties and have also perused the documents placed on record. The present case revolves around two individuals statedly knowing each other since 2018 and have had constant contact through WhatsApp. The WhatsApp chats between them have been placed on record and the same have been verified. In this regard, a status report has also been filed. A perusal of the said report would show that the said chats have been verified from the applicant's mobile as well as from the complainant and it has been further found that there are no allegations regarding SC/ST Act and forceful sexual assault in the said chats.

5. In the present matter, Section 3(2)(v) of the SC/ST Act has been invoked and thus, the issue of bar under Section 18 of the SC/ST Act arises for consideration. The said provisions are reproduced below:-

***“3. Punishments for offences atrocities:***

*xxx*

*(2) Whoever, not being a member of a Scheduled Caste or Scheduled Tribe, –*

*xxx*

*(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property knowing that such person is a member of Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine*

*xxx”*



***“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 accusation of having committed an offence under this Act.”***

6. A reading of the above-mentioned provision would show that for invocation of offence under Section 3(2)(v) of the SC/ST Act, it is essential that the offence must be punishable under IPC with imprisonment for 10 years or more. Further, the Supreme Court in the judgements of Dinesh @ Buddha v. State of Rajasthan reported as **(2006) 3 SCC 771** and Khuman Singh v. State of Madhya Pradesh reported as **2019 SCC OnLine SC 1104** has clarified that for the applicability of Section 3(2)(v) of the SC/ST Act, it is essential that the offence must have been committed against the person on the ground that he is a member of Scheduled Caste or Scheduled Tribe. Thus, a reasonable nexus or connection has to be established between the commission of the offence and the individual's membership to the said community/social strata. As a corollary, the purport or meaning of the said Section can in no sense be understood as bringing into fold every offence under IPC punishable with 10 years or more, solely for the reason that it was committed against a member of the Scheduled Caste or Scheduled Tribe.

7. Further, the Supreme Court in Prathvi Raj Chauhan (Supra), while dealing with the issue of bar under Section 18, has observed as under:-

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***11. Concerning the applicability of provisions of Section 438 CrPC, it shall not apply to the cases under the 1989 Act. However, if the complaint does not make out a prima facie case for applicability of the provisions of the 1989 Act, the bar created by Sections 18 and 18-A(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 CrPC 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.*

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*32. I would only add a caveat with the observation and emphasise that while considering any application seeking pre-arrest bail, the High Court has to balance the two interests : i.e. that the power is not so used as to convert the jurisdiction into that under Section 438 of the Criminal Procedure Code, 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.*

*xxx”*

Following the dictum of the Supreme Court, this Court in Danish Khan @ Saahil v. State (Govt. of NCT of Delhi) (Neutral Citation: **2021:DHC:15**); Joy Dev Nath v. State (Govt. of NCT of Delhi) (Neutral Citation: **2022:DHC:329**) and Suraj Singh (Supra) have granted anticipatory bail to the applicant therein in cases involving SC/ST Act.

From the above discussion, it can be culled out that while the bar under Section 18 of the SC/ST Act has been created for the protection of the dignity and interest of the SC/ST, however, the same does not completely tie down the hands of the court. In situations wherein prima facie, the complaint/FIR does not establish a case of commission of offence under the



SC/ST Act, then the court is well within its rights to grant anticipatory bail, irrespective of the bar under Section 18.

8. It is trite law that at the time of consideration of bail application, the court has to only form a prima facie view as to whether the offence alleged to have taken place can be attributed to the applicant. While the parties have contested the factual matrix put forth by the other, on a prima facie consideration, it can be seen that it has not adequately established that the alleged incident was committed owing to the complainant being a Scheduled Caste/Scheduled Tribe, bring it into the fold of Section 3(2)(v) of the SC/ST Act. Admittedly, the entire incident has taken place in private and there is no public witness to the same. Further, as per the status report, the WhatsApp chats between the parties also do not put forth any evidence showing that any sexual assault took place or that casteist remarks have been made by the applicant.

9. Keeping in view the aforesaid facts and circumstances, the interim protection granted to the applicant vide order dated 13.10.2023 is made absolute and it is directed that in the event of arrest, the applicant be released on bail subject to him furnishing a personal bond in the sum of ₹25,000/- with one surety of like amount to the satisfaction of the Arresting Officer/Investigating Officer/SHO of the concerned Police Station and also subject to the following further conditions:-

- (i) At the time of furnishing bail bond, the applicant shall provide the mobile number, which he undertakes to keep operational at all times during the pendency of the trial.
- (ii) The applicant shall join the investigation as and when, he is asked for.



- (iii) The applicant shall inform the concerned Investigating Officer about his current residential address.
  - (iv) In case of change of residential address/contact detail, the applicant shall promptly inform the same to the concerned Investigating Officer/SHO.
  - (v) The applicant shall not directly or indirectly try to get in touch with the complainant or any other prosecution witnesses or tamper with the evidence.
  - (vi) The applicant shall regularly appear before the trial Court as and when the charge sheet is filed.
10. The application is disposed of in the above terms.
11. Needless to state that nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case as the observations are only for the purpose of the disposal of the present application.

**MANOJ KUMAR OHRI, J**

**MARCH 18, 2024/rd**