



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRA-S-850-2025

Reserved on: 23rd May, 2025

Pronounced on: 29th May, 2025

Harwinder Singh @ Harvinder Singh Brar

...Appellant

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Sant Pal Singh Sidhu, Advocate for the appellant.

Ms. Sakshi Bakshi, Assistant Advocate General, Punjab,
assisted by SI Gurpal Singh, SHO Jito and SI Sukhdarshan EO
Wing, Faridkot.

Mr. R.S. Bains, Senior Advocate with
Mr. M.S. Chauhan, Advocate for respondent No.2-complainant.

MANISHA BATRA, J :-

The present appeal has been filed under Section 14-A of the the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short '*Act, 1989*') by the appellant against the order dated 06.03.2025, passed by the learned Additional Sessions Judge, Faridkot, whereby an application filed by him under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short '*BNSS*') for grant of anticipatory bail in case arising out of FIR No. 10 dated 07.02.2025, registered under Section 125 of Bharatiya Nyaya Sanhita, 2023 (for short '*BNS*') and



Sections 25 and 27 of the Arms Act, 1959 [Section 109(1) of BNS and Section 3(1) of the Act, 1989 added later on] at Police Station Jaitu, District Faridkot, had been dismissed.

2. The aforementioned FIR was initially registered under Section 125 of BNS and Sections 25 and 27 of Arms Act on the basis of statement recorded by ASI Iqbal Singh posted at Police Station Jaitu, alleging that a video had surfaced on social media showing the appellant and his brother Gamdoor Singh, while firing shots with their weapons in village Chand Bhan. Investigation proceedings were initiated. Two witnesses namely Gamdoor Singh s/o Gura Singh and Pritam Singh recorded their statements to the effect that on 05.02.2025, the appellant and his brother Gamdoor Singh along with some other persons had gathered outside the house of Kuldeep Singh, Sarpanch of their village as there was some issue qua drainage of water and they had used filthy language against the caste of said Kuldeep Singh and had addressed him as '*Chuda chamiyar*'. Offences under Section 109(1) of BNS and Section 3(1)(r) and 3(1)(s) of the Act, 1989 were added. Investigation proceedings have been initiated and are underway. Apprehending his arrest, the appellant moved an application for grant of pre-arrest bail, which has dismissed by the Court of learned Additional Sessions Judge, Faridkot by passing the impugned order, by observing that the application filed by the appellant was not maintainable in view of provisions of Section 18-A of the Act, 1989. Feeling aggrieved thereby, the present appeal has been filed.

3. It is argued by learned counsel for the appellant that the



impugned order as passed by learned Additional Sessions Judge, is not sustainable in the eyes of law as while passing the same, the learned Additional Sessions Judge, did not appreciate the fact that there was no complaint by the actual alleged victim i.e. Kuldeep Singh making any allegations qua commission of the offence punishable under Section 3 of the Act, 1989. The witnesses Gamdoor Singh and Pritam Singh had sworn affidavits saying that they had never recorded any such statement that the appellant had used any caste related remarks against any person including the above named Kuldeep Singh or had used any weapon. The FIR No. 10 was registered under political pressure and as a counter blast to FIR No. 9 got registered against the above named Kuldeep Singh. No case for commission of offence under Section 109 of BNS has been made out as against the appellant. He is ready to join the investigation. His custodial interrogation is not required. No recovery is to be effected from him as the police had effected recovery of licenced weapon of the appellant in case bearing FIR No. 9 itself. With these broad submissions, it is urged that the appeal deserves to be allowed, the impugned order is liable to be set aside and the appellant deserves to be extended benefit of pre-arrest bail.

4. *Per contra*, it is argued by learned Assistant Advocate General, Haryana, assisted by learned counsel for respondent No.2 that there are serious allegations against the appellant. His custodial interrogation is required for conducting thorough investigation in the matter. Provisions of Section 3(1) of the Act, 1989 are attracted, hence, pre-arrest bail cannot be granted in view the bar under Section 18-A of the Act, 1989. The learned



Additional Sessions Judge rightly dismissed the application of the appellant for grant of bail. It is, therefore, argued that the appeal does not deserve to be allowed.

5. Rival contentions raised by learned counsel for the parties have been considered.

6. The appellant along with the co-accused is alleged to have uttered abusive words against Kuldeep, Sarpanch of village Chand Bhan. As per the provisions of Sections 3(1)(r) and 3(1)(s) of Act, 1989, any person who intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view or abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view, shall be liable to be punished. In the instant case, however, strangely there is no complaint on behalf of the alleged victim Kuldeep Singh qua utterance of any caste related abuses by the appellant against him and the FIR was registered on the statement of a police official. The appellant and the co-accused were nominated on the basis of statements recorded by two persons namely Gamdoor Singh s/o Gura Singh and Pritam Singh. Learned counsel for the appellant has placed on record copies of affidavits shown to be sworn by Gamdoor Singh s/o Gura Singh as well as Pritam Singh showing that some papers were got signed by the police from them and they had never recorded any statement making allegation that some wrong words qua his caste having been uttered by the appellant as against Kuldeep Singh.

7. So far as the offence under Section 3(1)(r) of the Act is



concerned, it is relevant here that the well settled proposition of law is that an anticipatory bail can certainly be granted to an accused if a *prima facie* case for commission of offence under the Act, 1989 is not made out or if it can be shown that the allegations were false. Reliance in this regard can be placed upon **Dr. Subhash Kashinath Mahajan v. State of Maharashtra and Another (2018) 6 SCC 454**, wherein it was also observed so by Hon'ble Supreme Court.

8. Reliance can also be placed upon a recent citation of Hon'ble Supreme Court reported as **Shajan Skaria v. State of Kerala and another, 2024 SCC OnLine SC 2249**, wherein it was observed that a duty is cast upon the Court to determine *prima facie* existence with a view to ensure that no unnecessary humiliation is caused to the accused. The Courts should not shy away from conducting a preliminary inquiry to determine if the narration of facts in the complaint/FIR infact discloses the essential ingredients required to constitute an offence under the SC/ST Act. It was further observed that if the accusation does not disclose the necessary ingredients of the offence on a *prima facie* reading, it cannot be said to be sufficient to bring into operation the bar envisaged by Section 18 of the SC/ST Act and holding otherwise would mean that even a plain accusation, devoid of the essential ingredients required for constituting the offence, would be enough for invoking the bar under Section 18 of the said Act.

9. On applying the above discussed position of law to the facts and circumstances of the present case, this Court is of the opinion that the allegations levelled in the FIR as against the appellant, even if accepted on



the face of the record do not disclose the ingredients for commission of offence punishable under the provision of Section 3 of the Act, 1989, on a *prima facie* reading, therefore, the bar of Section 18 thereof, cannot be stated to be operative.

10. So far as the offences punishable under Sections 125 and 109 of BNSS are concerned, a pen drive has been placed on record which is alleged to be containing video recording of the incident. On watching the video recording of this pen drive, it is however, revealed that neither the appellant nor co-accused Harwinder Singh is shown while carrying any firearm or using the same thereby endangering the life or personal safety or any other person or making any attempt to commit murder of some person. As such, it is also a debatable issue as to whether the ingredients of these offences are attracted or not? The appellant is ready to join the investigation. No recovery is to be effected from him, since his licensed firearm has already been recovered by the police. His custodial interrogation is not required. No purpose would be served by detaining him in custody. Accordingly, the appeal is allowed. The impugned order is set aside and the appellant is granted concession of anticipatory bail, subject to the conditions envisaged under Section 482 (2) of BNSS. This order shall also be subject to the following conditions:-

- (i) The appellant shall appear before the Investigating Officer within a period of 10 days from today and cooperate with the investigation and shall appear before the Investigating Officer as and when required.



(ii) He 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/her from disclosing such facts to the Court or to any Police Officer.

(iii) He shall not commit any similar offence while on bail.

11. In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with law.

12. It is made clear that the observations made hereinabove are only for the purpose of deciding the present appeal and the same shall not be construed as an expression of opinion on the merits of the case.

[MANISHA BATRA]
JUDGE

29th May, 2025

Parveen Sharma

1. *Whether speaking/ reasoned*
2. *Whether reportable*

: *Yes / No*
: *Yes / No*