

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-3144-2024
Reserved on: 13.01.2025
Pronounced on: 28.01.2025

Vikas Saini ...Appellant

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Dr. Pankaj Nanhera, Advocate and
Mr. Yogesh Vashista, Advocate
for the appellant.

Ms. Harpreet Kaur, A.A.G., Haryana.

Mr. Amritpal Singh Maan, Legal Aid Counsel
for respondent No.2.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
377	07.05.2024	Sadar Hisar	147, 149, 323, 506 IPC and 3(2) (va) of SC/ST Act

1. The appellant apprehending arrest in the FIR captioned above, on the allegations of assault and using caste based derogatory words and slurs, has come up before this Court in appeal after rejection of his bail by the court of Additional Sessions Judge, Hisar vide order dated 11.09.2024.

2. In paragraph 18 of the appeal, the accused declares that he has no criminal antecedents.

3. Facts of the case are being taken from status report filed by State counsel which reads as follows:-

*“3. That briefly stated facts of the case are that in the present case the FIR was registered on the basis of complaint of complainant/respondent No.2 contents of which are as below:-
To D.S.P., Headquarters Hisar, Subject: Application for the registration of case against: 1. Ramesh Sarpanch son of Sultan Saini (Mobile No. 8816089589) 2. Devender Saini son of Nihal Singh 3. Naresh Saini @ Narsi son of Jogiram 4. Ajay Saini son of OCT 202bash 5. Mukesh son of Satbir @ Satu 6. Sandeep son of Suresh, Caste Kumhar, all residents of Village Kharad, Tehsil and*

*District Hisar, 7. Karampal Sarpanch Representative, Caste Jat, Village Khokha, Tehsil and District Hisar, 8. An unidentified person with a weapon, 9. Poonam's cousin and other persons. I, Charanjilal, son of Mr. Panna Lal, resident of Village Khokha, Tehsil and District Hisar, belong to the Chamar caste. The above-mentioned accused belongs to non-scheduled castes and are well aware of my caste, knowing that I am from the Chamar community. On 31.01.2024, my son Ravinder Kumar solemnized marriage with the sister of Accused No. 5 Mukesh and relative of Accused No. 1 Ramesh (the current Sarpanch of Village Kharad) at Arya Samaj Mandir Trust in Ghaziabad, and got the marriage registered on the same day, a copy of which is attached. Poonam willingly solemnized her marriage with my son Ravinder against her family's wishes and started residing with my son. As soon as the family of Poonam came to know about the marriage, they were enraged that Ravinder, who belongs to the Chamar caste, had married a girl from their community. The accused, in pre-planned manner, came to my house on 02.02.2024. At that time, my wife Kitabo, my son Ajay, and my daughters Kaushalya, Rekha, and Asha were at home. All the accused entered my house together in a state of fury. When I inquired about the purpose of their visit, Accused Ramesh threatened me, saying, "You have no idea why we are here." On being asked, accused started shouting. When I opposed them, Accused Ramesh said, "Your son Ravinder has performed marriage with girl Poonam and how could he feign ignorance about the same. Don't you know about it? I will not let you live. I will kill you like a dog, you rascal, sister-f***er, foolish and I won't let you settle here. I will also trap you in a false case." the other accused also threatened us and supported Ramesh. These threats frightened us immensely, as one of the individuals among them was armed, and if we had said anything, they would have shot us there. They then demanded that I call my son Ravinder and ask where he was: Fearing for our lives, I called Ravinder and he told me he was in Delhi. Later, I found out that the accused Ramesh and others forcibly took my daughter-in-law with them. My son Ajay recorded a video of the incident on his phone. The video, along with a pen drive and a certificate under Section 65-B of the Evidence Act, is attached to this application. We were so frightened by the threats from the accused that we could not gather the courage to file a complaint, as the accused are powerful, wealthy, and of criminal nature. They came to our house with weapons, and Ramesh said that he has close connections with senior police officers. He warned us that if we filed a complaint about the threats, nothing would happen to them, but we would suffer severe consequences. Therefore, I request that a case be registered against the accused for entering my house, using caste- based slurs, issuing threats to kill, threatening to destroy our home, and falsely implicating us. The accused pose a grave threat to the life and property of me and my family, and we seek protection for our lives and property."*

4. Appellant's counsel prays for bail by imposing any stringent conditions. Appellant's counsel argued that the custodial investigation would serve no purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the appellant and family.

5. State's counsel opposes the bail.

6. It would be appropriate to extract the following portion of status report, which reads as under:-

“10. That it is pertinent to mention here that though the appellant/accused was not named in the FIR, however, the appellant/accused was identified in footage of occurrence of offence and his name was also disclosed by the co-accused Ramesh, Naresh, Mukesh & Ajay in their disclosure statement.

11. That the appellant/accused in connivance with other co-accused went to the house of complainant/respondent No.2 and also gave beatings to the complainant & victim Sandeep. That the presence of the appellant/accused at the place of occurrence also established from the footage which was produced by the son of the complainant/respondent No.2 namely Ajay.”

7. In *Prathvi Raj v. Union of India*, **2020:INSC:157 [Para 10]**, AIR 2020 SC 1036 , a three-judge bench of Supreme Court read down S. 18 by declaring as follows,

[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.

8. On prima facie analysis of the nature of allegations, there is no specific word that has been referred and which shall fall in the definition of prohibited words. Thus, the present appeal is maintainable.

9. Given the nature of injuries inflicted by the appellant, and other factors peculiar to this case, there would be no justifiability for custodial or pre-trial incarceration at this stage. Furthermore, the appellant is a first offender, and one of the relevant factors would be to provide an opportunity to course correct. Even a prima facie perusal of paragraph 7 of the appeal needs consideration for bail.

10. In *Gurbaksh Singh Sibbia v State of Punjab*, 1980 (2) SCC 565, (Para 30), a Constitutional Bench of Supreme Court held that the bail decision must enter the cumulative effect of the variety of circumstances justifying the grant or refusal of bail. In *Kalyan Chandra Sarkar v Rajesh Ranjan @ Pappu Yadav*, 2005 (2) SCC 42, (Para 18) a three-member Bench of Supreme Court held that the persons accused of non-bailable offences are entitled to bail if the Court concerned concludes that the prosecution has failed to establish a prima facie case against him, or despite the existence of a prima facie case, the Court records reasons for its satisfaction for the need to release such person on bail, in the given fact situations. The rejection of bail does not preclude filing a subsequent application. The courts can release on bail, provided the circumstances then prevailing require, and a change in the fact situation. In *State of Rajasthan v Balchand*, AIR 1977 SC 2447, (Para 2 & 3), Supreme Court noticeably illustrated that the basic rule might perhaps be tersely put as bail, not jail, except where there are circumstances

suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the Court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh when considering the question of jail. So also, the heinousness of the crime. In *Gudikanti Narasimhulu v Public Prosecutor*, (1978) 1 SCC 240, (Para 16), Supreme Court held that the delicate light of the law favors release unless countered by the negative criteria necessitating that course. In *Prahlad Singh Bhati v NCT, Delhi*, (2001) 4 SCC 280, Supreme Court highlighted one of the factors for bail to be the public or the State's immense interest and similar other considerations. In *Dataram Singh v State of Uttar Pradesh*, **2018:INSC:107 [Para 7]**, (2018) 3 SCC 22, (Para 6), Supreme Court held that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously, compassionately, and in a humane manner. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

11. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborative and stringent conditions. In *Sushila Aggarwal v. State (NCT of Delhi)*, **2020:INSC:106 [Para 92]**, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions. In *Sumit Mehta v. State of N.C.T. of Delhi*, (2013)15 SCC 570, Para 11, Supreme Court holds that while exercising power Under Section 438 of the Code, the Court is duty-bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. While exercising utmost restraint, the Court can impose conditions countenancing its object as permissible under the law to ensure an uninterrupted and unhampered investigation.

12. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the appellant makes a case for bail. This order shall come into force from the time it is uploaded on this Court's official webpage.

13. Given above, provided the appellant is not required in any other case, the appellant shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

14. While furnishing a personal bond, the appellant shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

15. This order is subject to the petitioner's complying with the following terms.

16. Till the completion of the trial, the petitioner shall not contact, call, text, message, remark, stare, stalk, make any gestures or express any unusual or inappropriate, verbal or otherwise objectionable behavior towards the victim and victim's family, either physically, or through phone call or any other social media, through any other mode, nor shall unnecessarily roam around the victim's home.

17. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall not enter the property, workplace, and residence of the victim until the statements of all non-official and informal witnesses in the trial are recorded. This Court is imposing this condition to rule out any attempt by the accused to incapacitate, influence, or cause any discomfort to the victim. Reference be made to Vikram Singh v Central Bureau of Investigation, 2018 All SCR (CrI.) 458); and Aparna Bhatt v. The State of Madhya Pradesh, 2021:INSC:192, 2021 SCC Online SC 230.

18. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

19. *A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

Appeal allowed in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

28.01.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.