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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-3764-2024

Date of Decision: 20.05.2025

Amarjit Singh @ Amarjeet Singh and another

...Appellants

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Jasmine, Advocate
for the appellants.

Mr. Akshay Kumar, A.A.G., Punjab.

Ms. Riya Saudana, Legal Aid Counsel
for respondent No.2.

ANOOP CHITKARA, J.

Complaint No.	Dated	Police Station	Sections
100	17.07.2018	Khui Khera	3 (ii) (x) (xv) of SC&ST Act and 323/34 IPC

1. Seeking setting aside of impugned order dated 05.11.2024 passed in the complaint captioned above whereby application for anticipatory bail filed by appellants was dismissed, the appellants have come up before this Court by filing the present appeal under SC/ST Act.
2. Case called twice today but none has put in appearance on behalf of the private respondent, as such, Ms. Riya Saudana, Advocate (PH/5922-2024) is appointed as legal aid counsel on behalf of respondent No.2. She shall be entitled to her fee as per law. Copy of the appeal supplied to legal aid counsel and matter was again taken up after some time.
3. In paragraph 23 of the bail petition, the accused declares that they have no criminal antecedents.
4. The facts and allegations are being taken from the order passed by Additional Sessions Judge, Fazilka, which reads as follows:

“2. It is alleged that the complainant belongs to Dhanak caste/tribe which is recognized as schedule caste/schedule tribe under the Constitution of India. Schedule caste certificate of the complainant



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has been attached. The complainant is working as a labourer. He worked with different agriculturists within the place of his residence and surrounding areas. The accused being agriculturists are also known to complainant because earlier he had worked with them as laborur. As such the accused are well conversant with the name and caste of complainant. Sometime earlier both the accused called complainant at their village and asked him to work with them. At that time the complainant was working with another agriculturist so he showed his unavailability. Then both the accused got annoyed and openly threatened the complainant to get ready for dire consequences. On 08.07.2018 the complainant came to Dhani Nayian Wali (in the area of village Khui Khera) and was present at bridge of drain village Khuian Khera. He was waiting for conveyance. It was about 12:30 noon. From the Fazilka side one white colour Maruti car came there being driven by accused Amarjit Singh and accused Harjit Singh was also sitting opposite to him in said car. On seeing complainant, both of them stopped there and came out of the car. Accused Amarjit Singh caught hold complainant from his collar and slapped him on his face. Harjit Singh accused openly proclaimed that 'Dhanak' be not spared and caused first blows in the stomach and back of the complainant. On this Amarjit Singh accused again called the complainant that how he Dhanak has earlier replied them negatively and even has not paid any attention to them: Both the accused openly proclaimed that let this Dhanak, Kutta be taught lesson. At that time, at public place i.e., drain bridge a common man. Mahesh Kumar son of Sunder Lal resident of Dashmesh Nagar, near Water works No.4, Jalalabad (w) District Fazilka was also present. In the meantime Ramesh Kumar son of Dharam Chand resident of Saharni Tehsil and Dsitriect Sirsa, Krishan Kumar son of Manphool Singh resident of Kharian Tehsil and District Sirsa came there in a gray colour Jeep. They came in that area to arrange labour for paddy crops. They witnessed the occurrence and derogatory words uttered by both the accused for complainant and his caste and community. They also rescued the complainant at the hands of accused. The accused while fleeing away in their vehicle agale proclaimed that on that day complainant has been saved by the witnesses. They will not again spare him as and when they will get chance. The local police was informed, but the police did not take any action. Therefore, the present complaint was filed."

5. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

6. The State's counsel opposes bail on instructions. Counsel for the private respondent strongly opposed the grant of bail on the ground that there is bar to grant anticipatory bail in law.

7. In Prathvi Raj v. Union of India, 2020:INSC:157 [Para 10], AIR 2020 SC 1036 , a

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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. Based on a preliminary analysis of the nature of the allegations, the present appeal is maintainable.
9. Appellants were summoned to face trial in a complaint case and they undertake to appear before the trial Court without any delay. It is not a case where custodial interrogation is required.
10. Pre-trial incarceration should not be a replica of post-conviction sentencing. The evidence might be prima facie sufficient to launch prosecution or to frame charges, but this Court is not considering the evidence at that stage but is analyzing it for the stage of anticipatory bail. An analysis of the above does not justify custodial interrogation or pre-trial incarceration.
11. Given the above, the penal provisions invoked coupled with the primafacie analysis of the nature of allegations and the other factors peculiar to this case, there would be no justifiability for custodial interrogation or the pre-trial incarceration at this stage.
12. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the Appellants-Accused makes a case for bail.
13. Given above, provided the Appellants-Accused are not required in any other case, the Appellant-Accused shall be released on bail in the complaint 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 Officer/Court must be satisfied that if the accused fails to appear, such surety can produce the accused.
14. While furnishing a personal bond, the Appellants-Accused 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)	



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15. This order is subject to the Appellants-Accused's complying with the following terms. The Appellants-Accused shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The Appellant-Accused shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

16. Appellants shall appear before the trial Court before the next date of hearing or by 15.06.2025 whichever is earlier.

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

18. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Appellant-Accused 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.

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

20. Concerned Officer of the Legal Services Authority to ensure timely payment of fee to the legal aid counsel.

(ANOOP CHITKARA)
JUDGE

20.05.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.