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

**CRA-S-4195-2024 (O&M)
Reserved on : 19.02.2025
Date of decision: 25.02.2025**

Kewal Singh**...Appellant**

Versus

State of Punjab and another**...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. P. S. Ahluwalia, Advocate
for the appellant.

Ms. Sakshi Bakshi, AAG, Punjab.

Mr. Sumeet Pal S. Sidhu, Advocate for
Mr. Ramandeep Singh Brar, Advocate
for respondent No. 2.

MANISHA BATRA, J.

1. The present appeal has been filed under Section 14-A (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (*for short 'the SC/ST Act'*) by the appellant challenging the order dated 26.11.2024 passed by the Court of learned Additional Sessions Judge, Tarn Taran, whereby an application filed by them under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) for grant of anticipatory bail in case arising out of FIR No. 93 dated 01.11.2024, registered under Sections 296 and 351 of Bharatiya Nyaya Sanhita, 2023 (*for short 'BNS'*) and Section 3(1) of the SC/ST Act at Police Station Valtaha, Tarn Taran, had been dismissed.

2. Brief facts relevant for the purpose of disposal of this appeal are that the aforementioned FIR has been registered on 01.11.2024 on the basis

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of the statement got recorded by complainant/respondent No. 2 Satnam Singh alleging therein that he belonged to SC community and was working as a mason. His village Dasuwal was declared a reserved seat for Panchayat elections held in 2024 and his wife Manpreet Kaur was contesting the same for the post of Sarpanch. One Dr. Sarvan Singh was helping them in the elections. On the other hand, Sukhwinder Kaur wife of Chanan Singh was also a candidate for the post of Sarpanch and Kewal Singh (appellant) was helping her for getting maximum votes and eventually she won the election. It was further alleged that on 30.10.2024 at about 09:30/10:00 PM, Kewal Singh made a call from his mobile phone to the complainant and started abusing him and his family members and also used abusive language against them in the name of their caste, apart from extending threats to kill them. Thereafter, Kewal Singh had recorded an audio clip containing abusive language and sent the same to Dr. Sarvan Singh, which went viral among the general public, due to which, he faced great humiliation. After registration of the FIR, investigation proceedings have been initiated and the same are going on. Apprehending his arrest, the appellant has filed an application before the Court of learned Additional Sessions Judge, Tarn Taran for grant of anticipatory bail but the same had been dismissed, vide impugned order dated 26.11.2024. Hence, the instant appeal has been filed.

3. It has been argued by learned counsel for the appellant that the impugned order is not sustainable in the eyes of law as while passing the same, the concerned Court did not apply its judicious mind. The application filed by the appellant was dismissed by observing that a *prima facie* case under Section 3(1) of the SC/ST Act has been made out against the appellant, without considering the fact that the provisions of SC/ST are not

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even *prima facie* shown to be attracted in this case and that the appellant has been falsely implicated in this case. It is submitted that the allegations as levelled in the FIR, even if taken to be correct on the face of the record, do not make out any case for commission of subject offences. Even otherwise, there was unexplained delay of 02 days in reporting the matter to the police, which shows that the complainant has cooked up the entire story after due deliberations. As per own version of the complainant, there was a party fraction in the village. Hence, it is explicit that he has misused the same by levelling false allegations against the appellant.

4. It is further argued that the appellant has not ever recorded any audio clip containing any derogatory remarks and, therefore, the question of sending the same to anyone does not arise at all. It will be a matter of trial as to who had prepared the said audio clip and had made the same viral. The appellant is ready to join investigation. His custodial interrogation is not required. No recovery is to be effected from him. With these broad submissions, it is urged that the present appeal deserves to be accepted, impugned order is liable to be set aside and the appellant deserves to be given benefit of pre-arrest bail. To fortify his argument, learned counsel for the appellants has relied upon the authorities cited as ***Shajan Skaria vs. State of Kerala and another : 2024 SCC Online SC 2249, Vilas Pandurang Pawar and another v. State of Maharashtra and Others : (2012) 8 SCC 795*** and ***Dr. Subhash Kashinath Mahajan v. State of Maharashtra and Another : (2018) 6 SCC 454***.

5. *Per contra*, learned Assistant Advocate General, Punjab, assisted by learned counsel for respondent No.2/complainant, has argued that there is no illegality or infirmity in the impugned order as the

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allegations in the FIR *prima facie* make out a case for commission of offence punishable under Sections 3(1)(r) and 3(1)(s) of the SC/ST Act, apart from the offences punishable under Section 296 and 351(2) of BNS. The allegations against the appellant are serious in nature. He had not only abused the complainant and his family members in the name of his caste but had also recorded an audio clip using abusive and derogatory remarks against their caste and had made the same viral, which had caused great humiliation to the complainant. Since a *prima facie* case under the provisions of the SC/ST Act has been made out, the bar created under Section 18 of the SC/ST Act is certainly attracted in this case. It is, therefore, argued that the appeal is devoid of any merit and is liable to be dismissed on the grounds of maintainability itself.

6. This Court has heard learned counsel for the parties at considerable length and has also gone through the material placed on record carefully.

7. As per the allegations, the appellant and the complainant were supporting two rival candidates for the post of Sarpanch in the elections held in the year 2024, in which, the candidate supported by the appellant had won the elections. The appellant is alleged to have made a phone call to the complainant and had abused him and his family members in the name of their caste. As per further allegations, the appellant had then recorded an audio clip using derogatory and castiest remarks against the appellant and had sent the same to aforesaid Dr. Sarvan Singh, which had subsequently gone viral among the general public. The Court of learned Additional Sessions Judge, Karnal has dismissed the application filed by the appellants for grant of anticipatory bail by observing that a *prima facie* case under the

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provisions of SC/ST Act has been made out against the appellant and also in view of the bar created under Section 18 of the SC/ST Act. No doubt, Section 18 of the SC/ST Act bars the applicability of Section 482 of BNSS (*which is pari materia with Section 438 of Cr.P.C.*) in respect of offences under the SC/ST Act. However, in ***Dr. Subhash Kashinath Mahajan***'s case (supra), Hon'ble Supreme Court had observed that there is no absolute bar against grant of anticipatory bail in cases under the SC/ST Act, if no *prima facie* case is made out or where on judicial scrutiny, the complaint is found to be *prima facie malafide*. Further, in ***Prathvi Raj Chauhan v. Union of India : (2020) 4 SCC 727***, it was observed that where no *prima facie* material exists warranting arrest in a complaint, the Court has inherent power to direct a pre-arrest bail.

8. The question of applicability of Section 438 of Cr.P.C. to cases registered under SC/ST Act was also dealt with by Hon'ble Supreme Court in ***Vilas Pandurang Pawar***'s case (supra), wherein it was observed that although Section 18 of the SC/ST Act creates a bar for invoking Section 438 of Cr.P.C. (*which is pari materia with Section 482 of BNSS*), yet the Courts are entrusted with duty to verify the averments in the complaint and to find out whether an offence under the SC/ST Act is *prima facie* made out or not?

9. In ***Shajan Skaria***'s case (supra), which is a very recent pronouncement of the Apex Court, it was observed that a duty is cast upon the Courts 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 in fact discloses the essential ingredients required to constitute an offence under the SC/ST Act. It is expected of the courts to

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apply their judicial mind to determine whether the allegations levelled in the complaint, on a plain reading, satisfy the ingredients constituting the alleged offence.

10. It was further observed in the afore-cited case that such application of judicial mind should be independent and without being influenced by the provisions figuring in the complaint/FIR. The aforesaid role of the courts assumes even more importance when a *prima facie* finding on the case has the effect of precluding the accused person from seeking anticipatory bail, which is an important concomitant of personal liberty of the individual. The Apex Court further observed that accusation which does not disclose the necessary ingredients of the offence on a *prima facie* reading 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.

11. Taking into consideration the above discussed position of law, it has to be considered as to whether the provisions of the SC/ST Act are *prima facie* attracted in this case, so as to attract the bar under Section 18 of the said Act prohibiting the Court from exercising power for grant of anticipatory bail. As already mentioned, the appellant has been booked for commission of offences punishable under Sections 296 and 351(2) of BNS and Section 3(1) of the SC/ST Act. As per provisions of Sections 3(1)(r) and 3(1)(s) of the SC/ST Act, which are claimed to have been attracted, if a person not being a member of a Scheduled Caste or a Scheduled Tribe intentionally insults or intimidates with intent to humiliate a member of a

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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**, such person shall be punished with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine. However, on going through the allegations as levelled against the appellant, it is revealed that it is own case of the complainant that the appellant had abused them in the name of their caste by making a phone call to him. Hence, even if this allegations is taken to be true on the face of record, the essential ingredient for commission of the above offence is missing as the offence was not committed in public view. Reliance in this regard can be placed upon the authorities cited as ***Pramod Suryabhan Pawar vs. State of Maharashtra : (2019) 9 SCC 608*** and ***Pardeep Kumar vs. State of Haryana : (2020) RCR (Criminal) 694, Mohinder Singh Gaur vs State of Haryana, CRA-S-1265-2022, Sanjeev Kumar vs. State of NCT of Delhi : 2024 NCDHC 8705*** and ***Pramod Kumar Mishra vs. State of Jharkhan, Cr.M. P. No. 1988 of 2022***, wherein it was observed that to constitute an offence under the SC/ST Act, it must be alleged that the accused intentionally insulted or intimidated with intention to humiliate a member of Scheduled Caste or Schedule Tribe in any public place within public view. It was observed that when the caste based remarks were made over a mobile phone call to the informant or to a member of Scheduled Castes and it was admitted that the alleged conversation over the mobile phone was not in a public gaze nor witnessed by any third party, the alleged use of caste words cannot be said to have been committed within the public view. It was also observed that merely uttering such wrong words in the absence of any public view does not show any intention or *mens rea* to

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humiliate the complainant and would not *ipso-facto* constitute acts of commission of offence, which are capable of being taken cognizance under the SC/ST Act.

12. So far as the question of recording an audio clip by the appellant and sending the same to Dr. Sarvan Singh is concerned, admittedly, he is neither a member of SC/ST community nor there is anything on record to show that the same was either addressed to the complainant or was made viral by him. Hence, it will be a question of debate as to whether any *prima facie* case has been made out under the provisions of SC/ST Act in that regard. So far as the offences under Sections 296 and 351(2) of BNS are concerned, both the offences are bailable in nature. The appellant is ready to join investigation. His custodial interrogation is not required. As such, in the considered opinion of this Court, no useful purpose would be served by detaining him into custody. The Court of learned Additional Sessions Judge, while passing the impugned order, did not take all these points into consideration and, therefore, it is held that the impugned order is not sustainable and is liable to be set aside.

13. Accordingly, the present appeal is allowed. The impugned order is set aside. 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 also 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

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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.

14. 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.

15. 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.

25.02.2025
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>