

Surjeet And Others vs State Of Haryana And Anr on 25 September, 2024

Neutral Citation No:=2024:PHHC:126943

CRA-S-3231-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRA-S-3231-2024 (O&M)

Date of decision: 25.09.2024

Surjeet and others

...Appellants

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Preetinder Singh Ahluwalia, Advocate
for the appellants.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Pankaj Bali, Advocate
for respondent No. 2/complainant.

MANISHA BATRA, J. (Oral)

1. The present appeal has been filed under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the SC/ST Act') by the appellants challenging the order dated 18.09.2024, passed by the Court of learned Additional Sessions Judge, Karnal, whereby an application filed by them for grant of anticipatory bail in case arising out of FIR No. 248 dated 04.08.2024, registered under Sections 298, 299, 303, 351(2), 351(3) of BNS, 2023 and Sections 3(2) and 3(2)(va) of SC/ST Act at Police Station Munak, Karnal, had been dismissed.

2. Brief facts relevant for the purpose of disposal of this appeal are that the aforementioned FIR has been registered on the basis of a complaint lodged by respondent No. 2/complainant Ramesh alleging therein that on the night of 03.08.2024, a statue of Dr. Bhim Rao Ambedkar, installed in his

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3. It is argued by learned counsel for the appellants 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 appellants was dismissed by observing that the provisions for grant of pre-arrest bail were not applicable in the light of bar under Section 18-A of the SC/ST Act, without considering the fact that the provisions of SC/ST are not even prima facie shown to be attracted 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. The entire case is based on suspicion. The appellants have been implicated in this case by respondent No. 2/complainant feeling offended with the fact that he had made an attempt to encroach upon the panchayat land of the village and an FIR bearing No. 179 dated 14.06.2024 was registered against him and some other persons.

4. It is further argued by learned counsel for the appellants that the Court of learned Additional Sessions Judge, Karnal was required to verify the allegations in the complaint to find out as to whether any offence under the provisions of SC/ST was made out or not but no such efforts are shown 2 of 8 Neutral Citation No:=2024:PHHC:126943 CRA-S-3231-2024 (O&M) -3- to have been made. Further, while passing the impugned order, the concerned Court ignored the fact that the necessary ingredients to constitute offence under Sections 3(2) and 3(2)(va) of SC/ST Act were not made out. The FIR has been lodged against the appellants on palpably false grounds due to political vendetta by respondent No. 2 and in such circumstances, the appellants were certainly entitled to be get benefit of pre-arrest bail. It is argued that the appellants are ready to join investigation. Their custodial interrogation is not required. No recovery is to be effected from them. With these broad submissions, it is argued that the present appeal deserves to be accepted, impugned order is liable to be set aside and the appellants deserve 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. Learned State counsel has advance notice of the appeal. Memo of appearance has been filed on behalf of respondent No. 2/complainant. It is argued by learned State counsel, assisted by learned counsel for respondent No. 2/complainant, that there is no illegality or infirmity in the impugned order as the allegations in the FIR prima facie disclose a case for commission of offences punishable under Section 3(2)(va) of SC/ST Act, apart from various provisions of BNS, as mentioned therein.

The allegations against the appellants are serious in nature. By damaging and committing theft of the statue of Dr. Bhim Rao Ambedkar, the appellants have insulted and outraged the religion of the community, to which the complainant 3 of 8 Neutral Citation No:=2024:PHHC:126943 CRA-S-3231-2024 (O&M) -4- belongs i.e. Scheduled Caste community. 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. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record carefully.

7. As per allegations, appellant No.1, who is Sarpanch of the village, along with other appellants and co-accused had destroyed/damaged the statue of Dr. Bhim Rao Ambedkar and had committed theft of the same on the night of 03.08.2024. The appellants have been booked for commission of offences punishable under Sections 298, 299, 303, 351(2), 351(3) of BNS, which are pari materia with Sections 295, 295-A, 379 and 506 of IPC, respectively, on the allegations of destroying and removing the statue of Dr. Bhimrao Ambedkar, who is considered to be an idol of SC community, which the complainant admittedly belongs to. The Court of learned Additional Sessions Judge, Karnal has dismissed the application filed by the appellants for grant of anticipatory bail keeping in view the bar under Section 18 of the SC/ST Act. No doubt, Section 18 of the SC/ST Act bars the applicability of Section 438 of Cr.P.C. (which is pari materia with Section 482 of BNSS) 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.

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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., 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 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 5 of 8 Neutral Citation No:=2024:PHHC:126943 CRA-S-3231-2024 (O&M) -6- 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 appellants are booked for commission of offences punishable under Sections 298, 299, 303, 351(2), 351(3) of BNS, 2023 and Section 3(2)(va) of the SC/ST Act. As per this provision of SC/ST Act, if any person who not being a member of schedule castes or schedule tribes commits any offence specified in the schedule, against a person or property, knowing that such person is a member of scheduled caste or scheduled tribe or such property belongs to such member, the same shall be punishable with such punishment as specified under the IPC for such offences and shall also be liable to pay fine. On going through the schedule of this Act, it is revealed that apart from the offence under Section 506 of IPC (which is pari materia with Section 351 of BNS), none of other offences, for which, the appellants have been booked is specified in this schedule. As per Section 351 of BNS, any person who threatens another by any means, with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, 6 of 8 Neutral Citation No:=2024:PHHC:126943 CRA-S-3231-2024 (O&M) -7- commits criminal intimidation.

12. On going through the contents of the FIR, it is, however, revealed that there is not even an iota of allegation with regard to respondent No. 2/complainant being criminally intimidated by either of the appellants. As such, the ingredients of Section 351 of BNS are not prima facie attracted in this case, so as to further invoke Section 3(2)(va) of SC/ST Act. The other offences, for which the appellants are booked i.e. Sections 298, 299 and 303 of BNS, are not covered under the schedule to the SC/ST Act and, therefore, it is quite explicit that the provisions of Section 3(2)(va) of the SC/ST

Act are prima facie not proved to be attracted in this case. The offences which are punishable under the provisions of BNS are triable by the Magistrate upto maximum punishment of three years. It is also a question of debate as to whether the provisions of Sections 298, 299 and 303 of BNS have been attracted in this case or not, since the allegations levelled in the complaint in this regard are not in reference to any particular accused/appellant but are common against all of them. No specific act has been attributed to the appellants. They are ready to join investigation. Their custodial interrogation is not required. As such, in the considered opinion of this Court, no useful purpose would be served by detaining the appellants 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.

9. Accordingly, the present appeal is allowed. The impugned order is set aside. The appellants are granted concession of anticipatory bail, subject to the conditions envisaged under Section 482(2) of BNSS, 2023. This order shall also be subject to the following conditions:-

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(i) The appellants 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) They 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) They shall not commit any similar offence while on bail.

10. 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.

11. 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.

25.09.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No

