



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

206

CRA-S-4048-2024(O&M)

Date of decision: 16th January, 2025

Bimla

...Appellant

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Sumit Sangwan, Advocate for the appellant.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Jagbir Singh, Advocate for respondent No.2.

MANISHA BATRA, J (ORAL):-

The instant appeal has been filed under Section 14-A of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act') thereby challenging the order dated 29.11.2024 passed by the Court of learned Additional Sessions Judge, Charkhi Dadri, whereby an application for pre-arrest bail in case arising out of FIR No. 249 dated 01.11.2024 registered under Section 3(2)(va) of the Act and Sections 115(2), 190, 191(2), 191(3), 324(4), 329(3) and 351(2) of Bharatiya Nyaya Sanhita, 2023 (for short 'BNS') at Police Station Badhra, District Charkhi Dadri, had been dismissed.

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



of complaint got lodged by complainant Bimla wife of Bishambhar Dyal (hereinafter referred as Bimla-I) alleging that on 01.11.2024, the appellant-Bimla (hereinafter referred as Bimla-II) along with the co-accused had criminally trespassed into their agricultural land, damaged the growing crop, assaulted them, criminally intimidated them by extending threats to kill and insulted them by hurling abuses in the name of their caste. They had also broken her tooth. After registration of FIR, investigation proceedings were initiated and are underway. Apprehending her arrest, the appellant had moved an application of pre-arrest bail. However, learned Additional Sessions Judge, Charkhi Dadri dismissed the same by passing the impugned order, while observing that the application was not maintainable under Section 18-A(2) of the Act and further that the custodial interrogation of the appellant was must.

3. The present appeal has been filed by the appellant on the grounds and it is argued by her counsel that the impugned order is not sustainable in the eyes of law as while passing the same, the Court of learned Additional Sessions Judge, Charkhi Dadri, ignored the fact that it was the complainant party, who was the aggressor. A case bearing FIR No.252 dated 02.11.2024 had been got registered by the appellant also with regard to the same incident. Infact, the members of the complainant party had entered inside the land in their possession and had assaulted them. The ingredients for commission of offence under Section 3(2)(va) of the Act were not at all attracted. The learned Court below wrongly observed that the bar under Section 18 of the Act was attracted in this case. She is ready to



join the investigation. Her custodial interrogation is not required. No recovery is to be effected from her. With these broad submissions, it is urged that the appeal deserves to be allowed.

4. *Per contra*, learned Assistant Advocate General, Haryana assisted by learned counsel for the complainant has vehemently argued that the appeal does not deserve to be allowed as there are serious and specific allegations against the appellant which attracted the provisions of Section 3(2)(va) of the Act and therefore, learned Court below did not commit any wrong in holding that the bar of Section 18 of the Act was attracted and by dismissing the application. It is further urged that custodial interrogation of the appellant is must for conducting thorough investigation in the matter and it is stressed that the appeal is liable to be dismissed.

5. This Court has heard learned counsel for the parties at considerable length and have gone through the record carefully.

6. The allegations against the appellant are that on 01.11.2024, she formed membership of an unlawful assembly with the co-accused and in prosecution of common object thereto, had criminally trespassed into the agricultural land claimed to have been owned by the complainant party and to have assaulted them and then criminally intimidated them. As per the allegations, the appellant and co-accused had also insulted respondent No.2-complainant in the name of caste. The victim is admittedly a member of schedule caste community. The appellant has been booked for commission of offence under Section 3(2)(va) of the Act. As per this provision, whoever, not being a member of a schedule cast, if commits any offence specified in



the schedule against a person or property, knowing that such person is a member of a schedule caste or schedule tribe or such property belong to such member, shall be liable with such punishment as specified under the Indian Penal Code for such offences. The offence under Sections 115(2), 190, 191(2), 191(3), 324(4), 329(3) and 351(2) of BNS, (which are *pari materia* with Sections 147, 148, 149, 323, 440, 447 and 506 of IPC) are not covered under the schedule of the Act. Further, so far as the allegations of intentionally insulting the victim by hurling abuses in the name of caste are concerned, the same are general in nature, as it is nowhere mentioned in the FIR, as to which particular accused had insulted the complainant in the name of her caste or that the appellant had specifically stated so. As such, it is a debatable question as to whether, any *prima facie* case for commission of offence under Section 3(2)(va) of the Act thereby attracting the bar under Section 18 thereof is made out or not.

7. It is well settled proposition of law that anticipatory bail can be granted in cases registered under the provisions of the Act, if a *prima facie* case for commission of an offence under the same is not made out or if it can be shown that the allegations were false. In the given circumstances, this Court is of the opinion that the bar under Section 18 of the Act is *prima facie* not attracted. In this regard, this Court relies upon the observations made in ***Dr. Subhash Kashinath Mahajan vs. State of Maharashtra and another: (2018) 6 SCC 454*** and ***Prathvi Raj Chauhan vs. Union of India and others: AIR 2020 SC 1036***. Reliance can also be placed upon a recent citation of Hon'ble Supreme Court reported as ***Shajan Skaria vs. State of Kerala and***



another : ***2024 SCC OnLine SC 2249***, wherein it was observed by Hon'ble Supreme Court 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 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 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. The appellant is ready to join the investigation. No recovery is to be effected from her. Her custodial interrogation as such is not required. Therefore, this Court is inclined to hold that the appellant deserves to be extended benefit of pre-arrest bail. Accordingly, the appeal is allowed, the impugned order is set aside and the appellant is ordered to be released on interim bail subject to her joining investigation and surrendering before the Investigating Officer/Arresting Officer within a period of fifteen days from today and furnishing bonds to the satisfaction of the Investigating Officer and subject to the following conditions:-

- (i) The appellant shall cooperate with the investigation and shall appear before the Investigating Officer as and when required.



(ii) She 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) She shall not commit any similar offence while on bail.

8. 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.

9. 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

16th January, 2025

Parveen Sharma

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

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