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IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH  
102 CRA-S-1121-2025  
Date of decision: 3<sup>rd</sup> April, 2025

Kamlesh

...Appellant

Versus

State of Haryana and another

...Respondents

**CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. A.P.S. Shergill, Advocate for the appellant.  
Mr. Apoorv Garg, Sr. DAG, Haryana.  
Mr. Priyavrat Prashar, Advocate for respondent No.2.

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**MANISHA BATRA, J (ORAL):-**

This 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, 1989*') against the order dated 18.02.2025 as passed by the Court of learned Additional Sessions Judge, Special Court, Kaithal in case arising out of FIR No. 17 dated 29.01.2025 registered under Sections 115, 190, 191(3), 333, 351(2) of Bharatiya Nyaya Sanhita, 2023 (for short 'BNS') and Section 3(2) (va) the Act, 1989, at Police Station Cheeka, District Kaithal, whereby an application for grant of anticipatory bail as filed by the appellant, had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of this appeal are that the aforementioned FIR was registered on the basis of statement recorded by respondent No.2-complainant Raj Kumar @ Kala alleging that on 28.01.2025 at about 10:00 AM, he was working in his cattle shed when the appellant Kamlesh along with her husband Nafe Singh and their son Monu entered there. They started calling bad names to him by



abusing him in the name of his caste and extended threat to him to vacate the shed. Accused Monu caught him by neck and took him out of the shed. On hearing the clamour, Laxmi Chand his elder brother also reached there. The accused started assaulting his brother and himself, while giving abuses to them. Several neighbourers gathered at the spot. In the meanwhile, accused Abhe Ram accompanied by the co-accused, reached there being armed with sticks. All of them proclaimed “that the complainant and his family members being *dedh and chamars, should be taught a lesson*”. They opened an attack upon the complainant and his family members with sticks. In the meanwhile, police had reached there and saved them from the clutches of the accused. The complainant was rushed to the hospital and was given treatment. After registration of FIR, investigation proceedings have been initiated and the same are underway. Apprehending her arrest, the appellant moved application for grant of pre-arrest bail which was dismissed vide order dated 18.02.2025.

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 learned trial Court ignored the fact that the offence under Section 333 of BNS had been deleted during the course of investigation. All the other offences under the provisions of BNS are bailable in nature. The provisions of Section 3(2)(va) of the Act, 1989 are not at all attracted. It is a case of a version and cross- version as an FIR bearing No. 21 dated 01.02.2025, has been registered on the basis of complaint filed by appellant side on 01.02.2025. Appellant is ready to join the investigation. Her custodial interrogation is not required. No recovery is to be effected from



them. Therefore, it has been urged that the impugned order is liable to be set aside, appeal deserves to be accepted and she deserves to be given benefit of pre-arrest bail.

4. Status report has been filed by respondent-State. Learned Senior Deputy Advocate General Haryana assisted by learned counsel for respondent No.2-complainant has vehemently argued that there are specific and serious allegations against the appellant. The provisions of Section 18 of the Act, 1989 are attracted in the case and the same certainly bar grant of anticipatory bail to the appellant. The learned Additional Sessions Judge did not commit any error in declining the relief claimed by the appellant. Therefore, it has been argued that the appeal is liable to be dismissed.

5. Learned counsel for the parties have been heard at considerable length and I have gone through the record carefully.

6. As per the allegations, on 28.01.2025, the appellant along with her husband Nafe Singh and son Monu, had entered inside the shed of the complainant while being armed with sticks, had hurled abuses to him by making caste related remarks and by addressing him as '*dedh chamar*'. They also extended threats to him to vacate the plot and pulled him outside the same. As further alleged, thereafter, co-accused had appeared and had assaulted the complainant and had insulted him within public view by abusing him in the name of his caste. The learned Additional Sessions Judge, Kaithal while passing the impugned order observed that the provisions of Section 18 of the Act, 1989 were attracted and dismissed the prayer made by the petitioner for grant of pre-arrest bail.

7. It may be mentioned that the well settled proposition of law is



that the bar created by Section 18 of the Act, 1989 would not apply, if the complaint does not make out a *prima facie* case for applicability of this Act. As per Section 3(1)(r) and 3(1)(s) of the Act, 1989, intentional insult or intimidation to humiliate a person belonging to scheduled caste within public view and abusing by caste name in public view, is punishable under the aforementioned Sections as well as under Section 3(2)(va) of the Act, 1989. However, when, it is not made out that the victim was abused in the name of caste or insulted within public view, then no offence under the provisions of Act, 1989 can be stated to have been made out. In this regard reliance can be placed upon observations made by Hon'ble Supreme Court in *Karuppudayar Vs. State represented by the Deputy Superintendent of Police and others, 2025 INSC 132*, wherein it was observed that if the incident has not taken at a place which can be termed to be a place within public view, the offence would not come under the provisions of either Section 3(1)(r) and 3(1)(s) of the Act, 1989.

8. Undisputedly, as per Section 18 of the Act, 1989, the provisions of Section 438 of the Code of Criminal Procedure (which are *pari materia* with Section 482 of BNS) will not apply in relation to any case involving the arrest of any person accused of having committed an offence under this Act and, therefore, a person accused of an offence punishable under the provisions of the Act, 1989 is not entitled to invoke jurisdiction of Court under Section 438 of the Cr.P.C. Reliance in this context can be made to *Dr. Subhash Kashinath Mahajan vs. State of Maharashtra and another (2018) 6 SCC 454*, wherein the Hon'ble Supreme Court dealt with the provisions of Section 18 of the Act, 1989 and observed that the exclusion of provision for



anticipatory bail will not apply when no *prima facie* case is made out or the case is patently false or *mala fide* or where on judicial scrutiny, the complaint is found to be *prima facie mala fide*.

9. In the instant case, as per the allegations in the FIR itself, the present appellant had entered inside the shed of the complainant and had made casteist remarks and called the complainant by the name of his caste. The acts attributed to the appellant were obviously committed within the four corners of the shed of the complainant. Even as per the allegations, the co-accused had reached thereafter outside the said shed and brother of the complainant had also reached when the complainant was allegedly taken out from the shed. Since the specific act attributed to the appellant of abusing the complainant in the name of his caste and insulting him had not been done at a place which can be termed to be a place within a public view, therefore, in the considered opinion of this Court, no offence attracting the provisions of Act, 1989 can be stated to have been committed. The well settled proposition of law is that if *prima facie* no offence under the Act, 1989 is made out, anticipatory bail can be granted to an accused. While passing the impugned order dated 18.02.2025, the learned trial Court did not take these peculiar facts into consideration and therefore, in the considered opinion of this Court, the impugned order is not sustainable, accordingly, the same is set aside and the appeal is allowed and the appellant is ordered to be released on anticipatory bail, subject of his surrendering before the Investigation/Arresting Officer within a period of fifteen days and joining investigation and further subject to his furnishing bonds to the satisfaction of Investigating/Arresting Officer and on his complying with usual terms and

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conditions laid down in Section 482(2) of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023.

10. It is, however, clarified that the observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

11. Since the main appeal has been allowed, pending application, if any, is rendered infructuous.

**[MANISHA BATRA]**  
**JUDGE**

**3<sup>rd</sup> April, 2025***Parveen Sharma*

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

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