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

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**CRA-S-901-2025 (O&M)
Date of decision: 07.04.2025**

Anil Kumar and others**...Appellants****Versus****State of Haryana and another****...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Namit Khurana, Advocate
for the appellants.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Dhaman Preet Singh Bajwa, Advocate
for the complainant.

MANISHA BATRA, J. (Oral)

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 appellants challenging the order dated 11.03.2025 passed by the Court of learned Additional Sessions Judge, Yamuna Nagar, whereby an application filed by them under Section 482 of Bharatiya Nagarik Surakha Sanhita, 2023 (*for short 'BNSS'*) for grant of anticipatory bail in case arising out of FIR No. 57 dated 25.02.2025, registered under Sections 190, 191(2), 221, 352 of Bharatiya Nyaya Sanhita, 2023 (*for short 'BNS'*) and Sections 3(1)(r) and 3(1)(s) of the SC/ST Act at Police Station Jathlana, had been dismissed.

2. Brief facts relevant for the purpose of disposal of this appeal are that the aforementioned FIR has been registered on 25.02.2025 on the basis

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of a written complaint filed by the complainant Monika, who is Sarpanch of village Rajhedi, alleging therein on 21.02.2025 at about 01:30 PM, she had gone to panchayat land for installing banner for munadi as per order of BDPO. Son of Chowkidar namely Rinku was accompanying her. When she installed banners, then Anil Kumar, Parveen Kumar, Sukhwinder Kumar, Jai Ram, Anju, Nisha, Meena, Mamta, Sudesh, Birbal, Ajay and Rita gathered at the spot. Appellant Sukhwinder tore off the banner and abused her. She further stated that Meena used derogatory words relating to her caste, thereby calling her '*Churi-Chamar*'. She further stated that all the aforesaid persons quarreled with her and obstructed in performance of her official duties. She prayed that legal action may be taken against them. After registration of the FIR, investigation proceedings have been initiated and the same are going on. Apprehending their arrest, the appellants filed an application before the Court of learned Additional Sessions Judge, Yamuna Nagar but the same had been dismissed. Hence, the present appeal.

3. It is argued by learned counsel for the appellants that the impugned order is not sustainable as while passing the same, the learned Court concerned ignored that the respondent No. 2/complainant got registered the present FIR by misusing the process of law as no offence whatsoever has been made out against the appellants. In fact, the dispute relates to possession over a land, whereby despite the dismissal of a petition filed by one Jaipal before the Assistant Collector First Grade, Radaur, in which the Gram Panchayat was also a party, seeking eviction of the appellant, the Gram Panchayat was trying to take forcible possession of the said land from the appellants. The appellants had filed a civil suit and an injunction was passed thereby restraining the Gram Panchayat to interfere

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into the peaceful possession of the appellants on the land in dispute. As a counterblast to the same, the complainant has got registered the present FIR with false and baseless allegations. The incident had allegedly taken place in the evening of 21.02.2025 but the complaint for registration of FIR was moved by the complainant on 25.02.2025 at 05:30 PM, which shows that there is unexplained delay in reporting the matter to the police. Even otherwise, a perusal of the FIR would show that there is no allegation against the appellants qua using any derogatory and caste related words against the complainant. The provisions of Section 3 of SC/ST Act have not been attracted in this case against the appellants. They are ready to join investigation. The offences under the provisions of BNS are also not made out against the appellants. More so, these offences are bailable. Learned Additional Sessions Judge, Yamuna Nagar had wrongly observed that the provisions of Section 482 of BNS were not attracted in view of the allegations qua commission of offences punishable under Sections 3(1)(r) and 3(1)(s) of SC/ST Act. With these broad submissions, it is argued that the impugned order is liable to be set aside, the present appeal deserves to be accepted and the appellants deserve to be given benefit of pre-arrest bail.

4. *Per contra*, learned Assistant Advocate General, Haryana, in terms of the status report and assisted by learned counsel for the complainant, has argued that there are serious and specific allegations against the appellants. The appellants have not only obstructed the complainant, who is Sarpanch of the village, from performing her official duties but have also insulted her by using caste related words against her. It is further argued that during the course of investigation, a CCTV footage of the incident has been procured a perusal of which shows that the appellants

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have committed the subject crime while using derogatory caste related words against the complainant. The custodial interrogation of the appellants is required for thorough investigation in the matter. Even otherwise, provisions of Sections 3(1)(r) and 3(1)(s) of the SC/ST Act are fully attracted in this case, thereby creating a bar for exercising powers under Section 482 of BNSS. Hence, it is urged that the present appeal is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record carefully.

6. As per allegations, the appellants along with co-accused are alleged to have formed membership of an unlawful assembly and in prosecution of common object of that unlawful assembly, are alleged to have obstructed the complainant from performing her official duties being Sarpanch of the village. They are also alleged to have insulted the complainant by using caste related words against her. As per the provisions of Sections 3(1)(r) and 3(1)(s) of SC/ST Act, any person who intentionally insults or intimidates with intent to humiliate a member of a 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 shall be liable to be punished. However, a bare perusal of the contents of the FIR shows that there are no such allegations against the appellants that they had used any caste related words against the complainant. Rather, such allegations are against co-accused Meena wife of Jarnail. There is unexplained delay of four days in reporting the matter to the police. Hence, the possibility of utilizing the same in making false allegations against the appellants with a view to invoke the provisions of

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SC/ST Act cannot be ruled out. Therefore, no *prima facie* case for commission of offence punishable under Sections 3(1)(r) and 3(1)(s) of SC/ST Act can be stated to have been made out against the appellants, thereby attracting the bar under Section 18 of SC/ST Act. Reliance in this regard can be placed upon ***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*** wherein Hon'ble Supreme Court has held that anticipatory bail could be granted if a *prima facie* case of commission of an offence under the Act is not made out or if it can be shown that the allegations were false. 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 in fact discloses the essential ingredients required to constitute an offence under the SC/ST 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 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. Given the peculiar facts and circumstances of the case, I am of the opinion that the appellants deserve to be extended benefit of pre-arrest bail.

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7. 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. This order shall also be subject to the following conditions:-

(i) The appellants shall appear before the Investigating Officer within a period of 10 days from today and cooperate with the investigation and shall also appear subsequently 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.

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 herein above 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.

07.04.2025

Wassem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No