



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

**CRA-D-1313-2024 (O&M)
Reserved on: 28th January 2025
Date of decision: 14th February 2025**

RICHPAL SINGH**APPELLANT**

versus

STATE OF HARYANA**RESPONDENT**

CORAM: MR. JUSTICE DEEPAK SIBAL
MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Nikhil Ghai, Advocate
for the appellant.

Mr. Vikrant Pamboo, Sr. DAG, Haryana.

HARPREET KAUR JEEWAN, J.

1. The instant appeal has been filed by the appellant assailing the order dated 04.09.2024, passed by the Additional Sessions Judge, Sirsa, declining to grant anticipatory bail to the appellant in FIR No.255 dated 25.08.2020, under Sections 124-A, 148, 153-A, 186, 341, 342, 353 and 506 read with Section 149 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") and Sections 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as "UAPA").

2. The FIR was registered at the instance of ASI Anil Kumar with the allegations that on 25.08.2020, he along with other Police officials, was present in Court Complex, Ellenabad and on that day, the bail application of accused Kulwant Singh, Jaswant Singh and Hardeep Singh, in case bearing FIR No.377 of 2020, under Sections 295, 295-A read with Section 34 IPC, was fixed for hearing before the Court. The said bail application was allowed and a number of persons, under the leadership of Gurmeet Singh



Tilokewala, sat in front of the main gate of the Court Complex and closed the said gate. They did not allow anyone to go inside or come out of the Court Complex. It was also proclaimed that in case anyone tried to open the gate of the Court Complex, his neck would be severed and slogans of “Khalistan Zindabad” were raised.

2.1 During the course of investigation, videos and photographs of the place of occurrence were perused and the appellant, along with 13 other accused persons, was nominated.

3. Learned counsel for the appellant contends that the Police had already completed investigation against the appellant and presented final report/challan under Section 173(2) of Cr.P.C. (Annexure A-2), before the concerned Court. It is further contended that after completion of investigation and submission of final report, the custody of the appellant would not be required by the Investigating Agency. It is further contended that the appellant was present in the Court Complex to visit his lawyer in connection with his pending cases under the Negotiable Instruments Act and his mere presence at the spot would not constitute any unlawful activity, as defined under Section 20 of the UAPA.

3.1 It is further contended on behalf of the appellant that raising slogans and making comments criticizing the Government’s actions would only fall within the ambit of Freedom of Speech and Expression and the same would not constitute any unlawful activity, as defined under the UAPA.



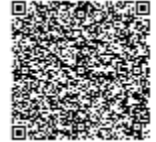
3.2 Reference has also been made to the decision of this Court in the case of “*Bikramjit Singh vs. State of Punjab*”; 2016 SCC (Online) P&H 1471.

4. Learned State counsel has opposed the present appeal submitting that the appellant is not entitled to invoke the provisions of Section 438 Cr.P.C., in view of the bar contained in Section 43-D(4) of the UAPA.

4.1 Referring to the status support filed by way of an affidavit of Sh. Sanjeev Balhara, HPS, Deputy Superintendent of Police, Ellenabad, District Sirsa, the learned State counsel contends that the identity of the appellant is not disputed in view of the videos and photographs of the spot. The presence of the appellant at the spot as well as his active participation is fully established from the said videos and photographs. It is further contented that the appellant as well as his co-accused were evading arrest and they could not be arrested, as such, challan/final report under Section 173(2) of Cr.P.C. has been submitted before the trial Court but without associating the appellant with the investigation.

5. We have heard learned counsel for the parties and perused the paper book.

6. The trial Court has declined to grant the relief of anticipatory bail to the appellant on the ground that the allegations against the appellant are serious in nature and against the unity and integrity of the nation. It has been further observed that the allegations against the appellant regarding his involvement have been found to be established during investigation as well



as in the challan/final report presented before the trial Court under Section 173 Cr.P.C.

7. The provisions of Section 43-D(4) of the UAPA provide a bar to the applicability of Section 438 Cr.P.C. in cases where the allegations are of commission of an offence punishable under the UAPA. The Hon'ble Apex Court in the case of “Anand Teltumbde vs. State of Maharashtra and Others”; 2021 (12) SCC 125, declined to exercise the powers under Section 438 Cr.P.C., in view of the provisions contained in Section 43-D(4) of the UAPA, while making the following observations:-

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However, we are satisfied that in view of the provisions contained in Section 43-D(4) of the Unlawful Activities (Prevention) Act, 1967, which exclude the operation of Section 438 CrPC, that no case is made out to exercise the powers under Section 438 CrPC. Section 43-D(4) is extracted hereunder:

"43-D. (4) Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act."

2. We are of the opinion that it cannot be said that no prima facie case is made out. The petitions cannot be said to be maintainable in view of the bar contained in Section 43-D(4) of the Unlawful Activities (Prevention) Act, 1967. The special leave petitions are, accordingly, dismissed. However, since the protection has been enjoyed by the petitioners approximately for 1½ years, three weeks' time from today is granted to them to surrender. The petitioners shall surrender their passport forthwith with the investigating agency/officer.

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8. Keeping in view the allegations in the FIR and the material collected during investigation, we are of the considered opinion that it cannot be said that no *prima facie* case is made out against the appellant. As such, the ratio of decision of this Court in the case of *Bikramjit Singh (supra)* is not applicable to the facts of the present case.

9. Keeping in view the afore facts and the ratio of the decision of the Hon'ble Apex Court in *Anand Teltumbde (supra)* as well as in view of the provisions of Section 43-D(4) of the UAPA, the present appeal stands dismissed.

10. Pending miscellaneous applications, if any, shall stand disposed of.

(DEEPAK SIBAL)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

14th February 2025
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Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*