

110 CRM-M-4732-2022

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MUN MUN DUTTA VS STATE OF HARYANA

**Present:** Ms. Ruchi Sekhri, Advocate for petitioner.

Ms. Dimple Jain, AAG, Haryana.

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Due to COVID-19 situation, the Court is convened through video conference.

This petition under Section 438 read with Section 482 Cr.P.C. is filed for grant of anticipatory bail in case of FIR No. 291 dated 13.5.2021, under Sections 3(1)(u) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amendment 2015), (for short 'the Act') registered at Police Station Hansi City, District Hansi.

The petitioner is a TV Artist. She made a vlog for YouTube, the extract of the vlog was down loaded and made viral. She has used the word "*Bhangi*" (for short "objectionable terms"). *Bhangi* is a Sub Caste declared Scheduled Caste in North India. Total four FIRs were registered for the same incident. A petition was filed in the Supreme Court and all the FIRs were clubbed with the present FIR.

Learned counsel for the petitioner submits that the portion of the vlog, out of context was made viral. The petitioner who is a registered voter in West Bengal, has a language barrier and had no intention to use the term in the sense it is being projected. If the entire vlog is seen, she has used the objectionable term for herself. It is further argued that no offence under Section 3 of the Act is made out as the ingredients of Section 3(1)(u) are not fulfilled. On gaining knowledge that the term used by her has hurt the sentiments of a particular community, she tendered an apology on her social media accounts.

Learned State counsel appearing on advance notice relies upon Section 18 of the Act and submits that there is bar for grant of anticipatory bail. The contention is that the term was used in a derogatory manner.

The petitioner is related to media. In the video, she has used the objectionable term. As per the contention raised, the objectionable term was used by the petitioner for herself and not for any other person belonging to any particular community.

It would be appropriate to reproduce Section 3(1)(u) of the Act:

"3.Punishments for offences of atrocities:

(1) whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

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(u) by words either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes;

xx xx xx."

It would not be appropriate at this stage for this Court to hold a mini trial to conclude as to whether the offence under Section 3 of the SC&ST Act is made out or not.

Supreme Court in **Dr. Subhash Kashinath Mahajan v. State of Maharashtra and another, AIR 2018 SC 1498** concluded as under:

*"83. Our conclusions are as follows:*

*i) Proceedings in the present case are clear abuse of process of court and are quashed.*

*ii) There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide. We approve the view*

taken and approach of the Gujarat High Court in *Pankaj D Suthar (supra)* and *Dr. N.T. Desai (supra)* and clarify the judgments of this Court in *Balothia (supra)* and *Manju Devi (supra)*;

iii) In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the S.S.P. which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.

iv) To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.

v) Any violation of direction (iii) and (iv) will be actionable by way of disciplinary action as well as contempt. The above directions are prospective.”

A review petition was filed by Union of India, titled as **Union of India v. State of Maharashtra and others, AIR 2019 SC 4917**. The review petition was partly allowed. Only directions No. (iii), (iv) and (v) were recalled. The relevant paras of **Union of India's case (supra)** is quoted below:

“54. The guidelines in (iii) and (iv) appear to have been issued in view of the provisions contained in Section 18 of the Act of 1989; whereas adequate safeguards have been provided by a purposive interpretation by this Court in the case of *State of M.P. v. R.K. Balothia, (1995) 3 SCC*. The consistent view of this Court that if *prima facie* case has not been made out attracting the provisions of SC/ST Act of 1989, in that case, the bar created under section 18 on the grant of anticipatory bail is not attracted. Thus, misuse of the provisions of the Act is intended to be taken care of by the decision above. In *Kartar Singh (supra)*, a Constitution Bench of this Court has laid down that taking away the

*said right of anticipatory bail would not amount to a violation of Article 21 of the Constitution of India. Thus, prima facie it appears that in the case of misuse of provisions, adequate safeguards are provided in the decision mentioned above.*

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67. We do not doubt that directions encroach upon the field reserved for the legislature and against the concept of protective discrimination in favour of downtrodden classes under Article 15(4) of the Constitution and also impermissible within the parameters laid down by this Court for exercise of powers under Article 142 of Constitution of India. Resultantly, we are of the considered opinion that direction Nos.(iii) and (iv) issued by this Court deserve to be and are hereby recalled and consequently we hold that direction No. (v), also vanishes. The review petitions are allowed to the extent mentioned above.”

Section 18A inserted in the Act was questioned before the Supreme Court in **Prathvi Raj Chauhan v. Union of India and others**, AIR 2020 SC 1036. Considering the provisions of Section 18A of the Act, the Supreme Court reiterated that while dealing with the review of **Dr. Subhash Kashinath Mahajan's case (supra)**, it was held that if *prima facie* case of applicability of the provisions of the Act is not made out, the bar created by Section 18 would not apply. The relevant para is quoted below:

*“10. Concerning the applicability of provisions of section 438 Cr.PC, it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A (i) shall not apply. We have clarified this aspect while deciding the review petitions.”*

It would be a debatable issue that by use of objectionable term describing herself, would itself be enough to fall within ambit of Section 3(1)(u) of the Act. This Court exercises self restraints form saying that '*prima-facie* the provisions of Act are not applicable, as it may affect the investigation and the trial.

It would not be a stage to dilate as to whether a loosely used term would be enough to bring the issue within the teeth of the Provisions of the Act.

Having conspectus of the fact, the petitioner is granted interim bail subject to her joining the investigation within one week. In the event of her arrest, she shall be released on bail subject to her furnishing adequate bail bonds to the satisfaction of the Investigating Officer. She is directed to join investigation as and when called for. She shall be bound by the conditions as envisaged under Section 438(2) Cr.P.C.

Adjourned to 25.2.2022.

(AVNEESH JHINGAN)

JUDGE

4<sup>th</sup> February, 2022

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