

**IN THE COURT OF JAGMOHAN SINGH SANGHE
ADDITIONAL SESSIONS JUDGE, FAZILKA.
(UID NO.PB0447)**

Case Details

Case Type	BA	
Filing No.	3692/2021	Filing Date : 19.08.2021
Regn. No.	BA/1639/2021	Dated : 19.08.2021
CNR No.	PBFZC0-005325-2021	
Date of order	24.08.2021	

Ashok Narula, aged 62 years, son of Sh. Hans Raj, resident of Street No.2, SBS Nagar, Abohar, Tehsil Abohar, District Fazilka.

...Applicant.

Versus

State of Punjab

...Respondent.

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FIR No. 67 dated 01.08.2021.  
U/s. 306 IPC, Added offence under section  
3 SC/ST Act vide DDR No. 23 dated  
05.08.2021.

Police Station City-II, Abohar.

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First Bail Application Under Section 438 Cr.PC.

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Present : Sh. Sahil Narula, Advocate  
counsel for applicant-accused Ashok Narula through VC.  
Shri Amit Goklani, Additional PP for the State.

**ORDER**

1. By this order, this Court intends to dispose off the present bail application under Section 438 Cr.PC having been filed by applicant Ashok Narula by apprehending his arrest in the case arising out of FIR mentioned in the head note.

2. Briefly stating, this FIR has been registered on the basis of statement of complainant Jasmeet Kaur wife of Parvinder Singh (since deceased) with the allegations that “her husband Parvinder Singh was doing private job in the Courts situated at Abohar. On 30.07.2021 her husband Parvinder Singh had gone to the Court but returned back home at about 3.00 PM and demanded bank Pass Book from her. He further disclosed to the complainant that the Bar President alongwith 3 other Advocates are harassing him and that the President has directed him to bring money within one hour. Thereafter, her husband left home. It was about 5.00 P.M that on her asking, her brother-in-law (Devar) Lakhwinder Singh went to the President and requested that he will pay the money which is due. The President told her brother-in-law that either he should arrange guarantee of some respectable person otherwise he has to pay money within one hour. When her husband did

not return back home till 9.00 PM, they started searching for him. A phone call of someone was received by them that one motorcycle and Mobile phone is found near the Canal at Kandh Wala road and on hearing this phone call, she alongwith her brother-in-law visited the spot and found the motorcycle, Mobile phone and bank pass book belonging to her husband lying there. On the morning of 01.08.2021 they again received a phone call that a dead body is found near Gaushala at Ganganagar road, upon which they visited the disclosed place and identified the dead body to be that of her husband Parvinder Singh. The dead body was transported through Ambulance to Civil Hospital and was kept in Mortuary. It is stated by the complainant that her husband has committed suicide by jumping in the Canal on account of the harassment having been caused to him by the President of Bar and 3 other Advocates. She requested for appropriate legal action against them.” After formal registration of FIR on the basis of such statement of complainant against Bar President Abohar and 3 other unknown Advocates, investigation was carried out. During the course of such investigation Lakhwinder Singh suffered a statement before the police on 05.08.2021 to the effect that his elder brother Parvinder

Singh (since deceased) was doing private job of sale of Power of Attorneys (Vakalatnamas) at Abohar Bar Association presided over by applicant/ Ravinder Kumar Setia son of Pirthi Raj. President Ravinder Setia, Advocate Naveen Punnia son of Jagdish Rai and Advocate Ashok Narula son of Hans Raj were harassing his brother by asking him to account for the money transactions of Bar Association and were abusing him in the name of his caste as they belonged to Schedule Caste Community. He has further disclosed that his brother has committed suicide on account of the harassment having been caused to him by above said 3 Advocates. On the basis of such statement of Lakhwinder Singh, the applicant alongwith Naveen Punnia Advocate and Ashok Narula Advocate were nominated as accused in this case and offence under section 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ( *for short 'SCST Act'*) was also added vide GD No. 23 dated 05.08.2021. During the further course of investigation, statement of one Roshan Singh son of Desa Singh, resident of village Hasta Kalan, Tehsil Fazilka was also recorded with regard to the receipt of a phone call and SMS of Parvinder Singh (since deceased) by this witness on 30.07.2021 at about 12.40 afternoon

wherein, he disclosed the harassment caused to him by the applicant and other non applicants. Such call details and Screen Shot of SMS forms part of the police file.

3. Notice of the bail application was served upon the State through learned Additional PP alongwith copy of bail application, who received the same, appeared and contested the bail application on merits. Police record was requisitioned which has been received and perused.

4. I have heard the respective contentions of both the learned Advocates and have perused the record with their able assistance.

5. Admittedly, this court vide order dated 13.08.2021 has already disposed off bail application of co-accused Ravinder Kumar Setia on the ground of maintainability of the application under section 438 Cr.PC before this court. Since this bail application is filed in the same FIR by another accused whose case is also on the similar footings, it is appropriate to reproduce the relevant part of said bail order is reproduced as under : -

“So for as the question of maintainability of this application for bail under section 438 Cr.PC, as argued by the counsel for applicant is concerned, it is an admitted fact that Section 18 of

the SC ST Act bars the application of section 438 Cr.PC to any case involving the arrest of any person on an accusation of having committed an offence under this Act. By further elaborating the applicability of Section 18 of SC ST Act, in its recent pronouncement titled as **Prathvi Raj Chauhan Vs. Union of India & Ors. (2020) 4 SCC 727**, Hon'ble Supreme Court has observed that the bar on the applicability of Section 438 Cr.PC shall not apply to cases under the SC ST Act only if "*the complainant does not make out a prima facie case for applicability of the provisions of the 1989 Act.*" It was further observed that "*the jurisdiction under section 438 Cr.PC should be used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR.*" It was further observed that '*a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament.*' In view of the said observations made by the Hon'ble Supreme Court, this court has carefully considered the allegations as contained in the FIR and statements of witnesses recorded during the course of investigation in this case.

8. It is evident that the offence under section 3 of SCST Act forming part of the array of offences in this FIR has been added vide GD No. 23 dated 05.08.2021 on the basis of the statement of Lakhwinder Singh i.e. the younger brother of deceased Parvinder Singh who by nominating the applicant and other non applicants as accused has specifically referred to the fact that his brother was being abused in the name of his caste while demanding money from him. In order to support

his allegation, he has also tendered the Scheduled Caste certificate of his brother. In this view of the matter, it can not be observed at this stage that there is no prima facie allegation in this case to attract offence under section 3 of the SCST Act. In view of these circumstances, more specifically being guided through the ratio of judgment in *Prathvi Raj Chauhan's case (supra)* that a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament, it is held that the rigor of section 18 of SCST Act is certainly attracted in this case. Hence the argument of the counsel for applicant qua maintainability of this bail application is not sustainable.”

6. On being confronted with the said order, learned counsel for the applicant has argued that vide order dated 18.08.2021 in CRM-M-33521 of 2021, Hon’ble High Court has stayed the arrest of co-accused Ravinder Kumar Setia in this case. This court has carefully gone through the said order of Hon’ble High Court which reveals that there is no observations made qua the maintainability of the bail application before this court so as to guide this court on that aspect. Moreover, the said application is still pending disposal on merits. In this view of the matter, no ground is made out to adopt any different view than that of the view adopted by this court while disposing off the bail application of co-accused.

7. In view of the fact that this court has already dismissed the bail application of co accused on the ground of maintainability of the application before this court, this application having been filed by the applicant whose case is also on similar footings, is also held to be not maintainable and the same stands dismissed accordingly. Police record be returned and bail application file be consigned to record room.

-Sd/-

**Pronounced in open court.  
Dated : 24.08.2021**

**(Jagmohan Singh Sanghe),  
Additional Sessions Judge,  
Fazilka. (UID No.PB0447).**

**\*Sunil Kumar  
Stenographer Grade-I.**