

BHAWANA GUPTA AND OTHERS VS STATE OF PUNJAB

Present: Mr. R. S. Rai, Senior Advocate,
 Mr. Chetan Mittal, Senior Advocate with
 Mr. Pawan Narang, Advocate,
 Mr. Kunal Mulwani, Advocate,
 Mr. Gautam Dutt, Advocate,
 Mr. Mayank Aggarwal, Advocate,
 Mr. Udit Garg, Advocate,
 Mr. Arjun S. Rai, Advocate,
 Mr. Farhad Kohli, Advocate and
 Ms. Sukhriti Rai, Advocate
 for the petitioners.

Mr. Vinod Ghai, Senior Advocate General with
 Mr. Gaurav Dhuriwala, Advocate,
 Mr. Ferry Sofat, Advocate and
 Mr. Jasdev Mehndiratta, Additional Advocates Generals, Punjab.

1. It is the contention of the learned Senior counsel for the petitioners that the FIR which has been registered against the petitioners dated 05.05.2023 attributes allegations against the petitioner No.1 with regard to the offence having been committed under the SC and ST (Prevention of Atrocities) Act, 1989. The said allegations as has been made therein clearly indicates that the petitioners were not known to the complainant nor is there any assertion in the FIR that they had ever met earlier. The question of, therefore, using such words, as has been mentioned in the FIR does not arise. It has been stated that these has been attributed to the petitioner for making the offence non-bailable as the other offences under IPC are bailable. The requirement of Section 8 of the 1989 Act, has also not been complied with which deals with the presumption of an offence. Reference has been made to Section 8(c) and contended that the accused need to have a personal knowledge of the victim or his family and it is under those circumstances only that the presumption would arise about the offence having been committed. He on this basis points out and states that the said offence therefore cannot be said to have been committed by the petitioners. Senior counsel asserts that he is only insisting

upon grant of interim bail to petitioner No.1 being a lady of 31 years of age and the senior correspondent of Times Now Nav Bharat Unit of Times Network, who had along with the other two petitioners gone to Ludhiana to attend an event relating to the inauguration of Government run Clinics on 05.05.2023 on an invitation received from Media Co-ordinator and was performing her duty. Assertion has also been made that she had panic attacks, qua which, on instructions sought from Ms. Chanchal Kumari, Deputy Superintendent Women Jail, Ludhiana, Ld. Advocate General stated that petitioner No.1 is doing well. Counsel however, contends that when the offence having not been made out which has been attributed to the petitioner No.1 she may be granted the interim bail.

2. Learned Advocate General, Punjab, on the other hand, has referred to Section 15A (3) of the 1989 Act to contend that the victim or the dependent thereof has a right to reasonable, accurate, and timely notice of any Court proceedings including any bail proceedings and the Special Prosecutor or the State Government has got to inform the victim mandatorily about any proceedings under this Act. He on this basis contends that time may be granted to the State to inform the complainant i.e. the victim. Reference has been made to the order dated 29.10.2021, Criminal Appeal No.1278 of 2021 titled as **Hariram Bhambhi Vs. Satyanarayan and another** to contend that without hearing the complainant bail should not be granted to the accused.

3. Learned Advocate General, Punjab, further states that he has not received the records of the case and, therefore, is unable to make submissions to Court in detail. He asserts that the FIR is not encyclopedia and, therefore, without the records he is unable to further assist the Court. Assertion has also been made that the petitioners had a remedy under Section 439 Cr.P.C. before the Special Court but the petitioners have approached this Court under Section 482 Cr.P.C. for quashing of the FIR and for grant of regular bail under Section 439 Cr.P.C. He on

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this basis contends that the prayer of the petitioners may not be accepted. It is submitted that the main allegations are against petitioner No.1 alone and, therefore, does not deserve the benefit as prayed for.

4. Having considered the submissions made by the counsel for the parties and on going through the FIR this Court at this stage, is of the prima facie view at this stage that the offence under the SC and ST (Prevention of Atrocities) Act, 1989 is not made out when seen in the light of provisions as contained in Sub Section 3 of Section 8 of the 1989 Act, which is alleged to have been committed. Apart from this aspect, the petitioner No.1 being a senior correspondent of National Network and a 31 years old lady deserves to be granted interim bail in the present facts and circumstances of the case. Objections as raised by the Ld. Advocate General will be considered on the next date of hearing when the reply to the petition and records of the case are available with him.

5. Mr. Gaurav Dhuriwala, Ld. Additional Advocate General, Punjab shall ensure that the State informs the complainant about the pendency of the present case and the proceedings and would supply a copy of the petition. The case will be taken up for consideration on 08.05.2023.

6. Petitioner No.1 Bhawana Gupta D/o Raj Kishore Gupta is ordered to be released on interim bail subject to the satisfaction of the CJM/Duty Magistrate, Ludhiana till the next date of hearing.

7. Copy of this order be supplied dasti to the counsel for the petitioner as well as Mr. Gaurav Dhuriwala, Additional Advocate General, Punjab under the signatures of the Registrar Judicial of this Court.

(AUGUSTINE GEORGE MASHI)
JUDGE

06.05.2023
Mamta Sikka