

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 1046 of 2015**

- Dr. Pratibha J. Mishra, W/o S.M. Mishra, aged about 52 years, Presently working as HOD (Social Work) & Dean of Social Science, Guru Ghasidas Central University, Koni, Bilaspur, R/o New Residential Colony, GGDU Premises, Koni, Bilaspur Chhattisgarh.

---- Applicant**Versus**

- State of Chhattisgarh, Through The Station House Officer, Police Station Koni, Bilaspur Chhattisgarh.

---- Non-Applicant

For Applicant	:	Mr. Rajeev Shrivastava, Advocate.
For Respondent/State	:	Mr. Wasim Miyan, Panel Lawyer

Hon'ble Shri Justice I.S. Uboweja**Order on Board****05/11/2015**

1. The applicant has filed this bail application under Section 438 of the Code of Criminal Procedure, 1973 (for short, 'the Code') for grant of anticipatory bail, apprehending her arrest in connection with Crime No. 173/2015 registered at Police Station Koni, Distt. – Bilaspur for the offence punishable under Sections 3(i)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Act').
2. The case of the prosecution, in brief, is that the allegation levelled against the applicant is that while she was discharging her duties, she abused the complainant – Ku. Priyanka Bara, who is student of 1st year (IInd Semester) in MSW course by taking her caste and thereby she committed the aforesaid offence.
3. Mr. Rajeev Shrivastava, learned counsel appearing for the applicant would submit that the applicant is the Dean of Social Science Department in the Guru Ghasidas Central University, Bilaspur and HOD of the Social Work Department and she took part in many National and International Seminars. He further submits that the applicant is not aware about the complainant even by name, face and caste prior to 11.06.2015. The offence has been registered against her only as a coercive measure to compel the applicant to exercise the power which she didn't have possessed to increase the marks of the complainant. He further submits

that the applicant has not committed any offence, and has been falsely implicated in the case. The applicant is a reputed person, she has never any adverse remark. He also submits that the material available on record does not disclose the commission of the offence punishable under Section 3(1)(x) of the Act. In support of his submissions he placed reliance on the decision of this Court in the matter of **Satyaprakash vs. State of Chhattisgarh** reported in **2004(1) CGLJ 162**, wherein it has been held that in the absence of allegations for the offence punishable under Section 3(1)(x) of the Act in the First Information Report or in the complaint, application under Section 438 of the Cr.P.C. is maintainable. It is further submitted by counsel for the applicant that even if the allegations made against the applicant are taken to be true, the offence under Section 3(1)(x) of the Act is not made against them.

4. On the other hand, Mr. Wasim Miyan, learned counsel for the State opposing the bail application submits that offence punishable under Section 3(1)(x) of the Act is a non-bailable offence and there is also an eye witness to the incident to connect the applicant with the crime in question.
5. I have heard learned counsel for the parties and perused the case diary.
6. Taking into consideration the rival contentions of the parties and going through the material available on record, I am of the view that at this stage prosecution has not collected any material against the applicant to *prima facie* show that the applicant has committed the offence punishable under Section 3(1)(x) of the Act. Consideration for bail is different from that of framing the charge, or making out the case against the applicant for trial even if strong suspicion is there. Therefore, in the light of above discussion and in view of the case law cited by the counsel for the applicant in respect of entertaining the application under Section 438 of the Cr.P.C in the matter of offence relating to the Act, 1989, I am of the considered opinion that it is a fit case in which the benefit of Section 438 of the Cr.P.C., should be extended to the applicant.
7. Accordingly, the application for grant of anticipatory bail is allowed. It is directed that in the event of arrest, the applicant shall be released on bail on her furnishing a personal bond in the sum of Rs.20,000/- with one surety of the like sum to the satisfaction of the Officer arresting her and she shall abide by all the following terms and conditions:

- (i) that the accused/applicant shall make herself available for interrogation before the concerned Investigating Officer as and when required;
- (ii) that the accused/applicant 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) that the accused/applicant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and that the applicant shall appear before the trial Court on each and every date given to her by the said Court till disposal of the trial.

Certified copy as per rules.

Sd/-
(I.S. UBOWEJA)
JUDGE

chandra