

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.Cr.C. (A) No. 1081 /2015

1. Yogeshwar (wrongly mention as Yogesh) Kumar Sahu, S/o. Baliram Sahu, Aged About 49 Years.
2. Smt. Chandra Kiran Sahu, W/o. Yogeshwar Kumar Sahu, Aged About 45 Years.
3. Abhishek Sahu, S/o. Yogeshwar Kumar Sahu, Aged About 16 Years, Being minor through his father Yogeshwar Kumar Sahu, Aged About 49 Years, S/o Baliram Sahu.

All by Caste Teli, R/o. Village Govindpur, Tahsil & Thana Kanker, Civil & Revenue District U.B. Kanker, Chhattisgarh.

---- Applicants

Versus

State Of Chhattisgarh, Through Police Station Kanker, District U.B. Kanker, Chhattisgarh.

---- Respondent

For Applicants : Mr. Parag Kotecha, Advocate.

For Respondent : Mr. Ashok Swarnakar, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

06/11/2015

1. Apprehending arrest in connection with Crime No.332/2015 registered at Police Station- Kanker, District U.B. Kanker (C.G.) for the offence punishable under Sections 294, 506/34 of the Indian Penal Code and Section 3(1)(10) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, the applicants have preferred this application under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail.
2. As per the prosecution case, the incident happened on 12.06.2015 and a written report has been made by Mohan Mandavi that the applicants who are residing in front of the house of the complainant used to throw their garbage over the drain wherein the outlet of the

drain is made that of the complainant and because of that it used blockage of the drain. Likewise on 12.06.2015, wife of the applicant No.1 threw the garbage in such drain which was opposed and in such eventuality, he was abused in name of the caste. Consequently, the wife was joined by the applicant No.1 & 3. It is further stated that while such altercation was going on, the applicant No.3 had abused in name of the caste.

3. Learned counsel for the applicants submits that the incident was of 12.06.2015 and the FIR was lodged on 01.10.2015 i.e. almost after four months and deliberately such averments have been made about the abuse in the name of the caste. He therefore placed his reliance in case of ***Bhupendra Das Vaishnava & Another v. State of C.G.*** reported in ***2006 (3) C.G.L.J. 88*** and would submit that there was a delay in FIR and the contents of the FIR would show that there was no element of intentional insult or intimidation with intent to humiliate a member of SC or ST. He further submits that the bar of Section 18 of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act would not apply in the facts of this case as prima facie it would be clear that false averments have been made.
4. Per contra, the learned State counsel opposes the prayer for grant of anticipatory bail. He would submit that there is a bar of Section 18 of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act.
5. I have heard learned counsel appearing for the parties and perused the case diary.
6. No doubt, it is the dominion of the State to register an offence under a particular Section applying all its wisdom, but the fact remains that when the matter is placed before the Court of law for ascertaining about the prime facie case for the purpose of bail, the

Court is always well within the jurisdiction to look into the material placed before it and to assess as to whether any particular offence is made out or not alongwith the other circumstances of lodging of the report.

7. Taking into the fact that the report was made after four months of the incident and the cause of report was quarrel happened over throwing of garbage into the drain and the applicants and complainant are neighbors residing opposite to each other. Further, taking into fact that the delay of four months was caused in lodging the FIR, prima facie the offence under Section 3(1)(x) is not made out. Had there been any such intimidation and insult, the matter should have been reported immediately. The delay in lodging FIR is a material fact, which cannot be ignored. Taking into these facts, prima facie, the offence cannot be said to have been made out and therefore the application for anticipatory bail is maintainable and the applicants cannot be denied of protection of anticipatory bail in view of the judgments in the cases of ***Satyaprakash v. State of C.G. {2004 (1) C.G.L.J. 162}*** and ***Abdul Abbas v. State of C.G. {2005 (2) C.G.L.J. 235}***.
8. In view of foregoing, I am inclined to extend the benefit of anticipatory bail to the applicants. Accordingly, the anticipatory bail application is allowed.
9. It is directed that in the event of arrest of the applicants in connection with the aforesaid offence, they shall be released on bail by the officer arresting them on furnishing a personal bond to a sum of Rs.25,000/- with one surety each in the like sum to the satisfaction of the concerned Investigating Officer. The applicants shall also abide by the following conditions :
 - (i) that the applicants shall make themselves available for interrogation before the investigating officer as and when required;

- (ii) that the applicants 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 applicants shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that the applicants shall appear before the trial Court on each and every date given to them by the said Court till disposal of the trial.

Certified copy, today.

Sd/-
(Goutam Bhaduri)
Judge