HIGH COURT OF CHHATTISGARH AT BILASPUR

M.Cr.C.(A) No. 408 /2016

Jitendra Kumar Asaiya, S/o. Rajaram (Sub Inspector), Aged About 29 Years, By Caste Jatava (Scheduled Caste), R/o. New Changora Bhata, Mahadeo Nagar, Raipur, District Raipur Chhattisgarh, At Present Residing at Police Station- City Kotwali, Ambikapur, District Ambikapur, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh, Through Station House Officer, Police Station- Kanker, District- Uttar Bastar Kanker, Chhattisgarh

---- Respondent

For Applicant	:	Mr. Ashok Kumar Swarnakar, Advocate.
For Respondent	:	Ms. Sunita Jain, Panel Lawyer
For Objector	:	Mr. Parag Kotecha, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

03/05/2016

1. Apprehending arrest in connection with Crime No.87/2016 registered at Police Station- Kanker, District Uttar Bastar, Kanker (C.G.) for the offence punishable under Section 376, 493, 315 of Indian Penal Code and Section 3(1)(12) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, the applicant has preferred this application under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail.

2. As per the prosecution case, a report was made by the prosecutrix on 28.03.2016 that she was an employee in the Police Department and the applicant was also an employee in the said Department, they developed relation and the applicant on the pretext of marriage sexually exploited the prosecutrix in between the period 2010 to

2012 and the said relation continued further. In the year 2015 out of the relation, the prosecutrix became pregnant and she was subjected to abortion at the instance of the applicant, however, no marriage was performed and the applicant performed marriage with the other girl, thereafter, the report was made.

3. Learned counsel for the applicant would submit that the prosecutrix is a major lady of 29 years and she was working in the Police Department. The applicant and the prosecutrix was voluntarily developed relation with each other and though the applicant wanted to marry the prosecutrix, but she refused for some reason or other. It is stated that after six years, the report has been made and the prosecutrix was a consenting party to the entire incident. Learned counsel further referred to the certificate of the applicant i.e. Annexure A-3 and would submit that the applicant also belonged to Scheduled Caste and therefore the provisions of Section 3(1)(12) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act is not applicable. He therefore submits that under the facts and circumstances of the case, the applicant may be enlarged on bail.

4. Per contra, learned State counsel and learned counsel for the Objector vehemently opposes the prayer for grant of anticipatory bail. It is contended that the applicant sexually exploited the prosecutrix for a considerable period and at the instance of the applicant, she was subjected to abortion and though on the promise of marriage the prosecutrix was exploited but eventually the applicant has not performed marriage with the prosecutrix.

5. Perused the case diary, statement and the report made by the prosecutrix. The report was made on 28.03.2016 with the averments that in the year 2009, the applicant and the prosecutrix came in contact and the relation developed which continued and on

every aspect the applicant stated that the prosecutrix would be married, however, the marriage was not performed. The statement of the prosecutrix and the documents of the case diary would show that the prosecutrix is a major lady of 29 years working in the Police Department. She came in contact with the applicant and physical relation was developed. The relation continued for six years and the report is made in the year 2016. The incident of abortion was stated to be in the year 2015, however, case diary do not show that any report was made. Perusal of the certificate filed by the applicant would show that the applicant belonged to Scheduled Caste.

6. Perusal of the statement and the report would show that offence sought to be committed is not for reason or on the ground victim belongs to particular caste. The preamble of the Act provides that “The Act has been enacted to prevent the commission of the offences of atrocities against the members of the Scheduled Castes and Scheduled Tribes. The expression 'atrocity' is defined in Section 2(1)(a) of the special Act to mean an offence punishable under Section 3. This definition of the word “atrocity” used by the legislature in clause (a) of sub-section (1) of section 2 explains the atrocity in a very few words simply saying “means an offence punishable u/s 3” of the said Act. Therefore, in a case like this, sine qua non for application of provisions of the Atrocities Act of 1989 an offence must have been committed against a person on the ground that such person is a member of Scheduled Castes or Scheduled Tribes, that is to say, that if the offence is not committed on the ground or for the reason that the victim belongs to the Scheduled Castes or Scheduled Tribes, the provisions of Act would not be attracted and if the evidence of this nature is lacking in any case and the victim, by chance, happens to be the member of Scheduled Caste or Scheduled Tribe, merely on this ground the aforesaid

provisions would not be attracted in addition to the provisions of the IPC.

7. Considering the statement of prosecutrix, who was a major lady of 29 years and also the fact that there is a delay in lodging the FIR, I am inclined to allow this bail application.

8. Accordingly, the anticipatory bail application is allowed and it is directed that in the event of arrest of the applicant in connection with the aforesaid offence, he shall be released on bail by the officer arresting him on furnishing a personal bond to a sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Investigating Officer. The applicant shall also abide by the following conditions :

(i) that the applicant shall make himself available for interrogation before the investigating officer as and when required;

(ii) that the 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 applicant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and

(iv) that the applicant shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

Certified copy as per rules.

Sd/-
(Goutam Bhaduri)
Judge

Ashok