

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 359 of 2016

- Harihar Yadav @ Shambhu S/o Kunj Bihari Aged About 32 Years Caste - Mahkul, R/o Puranga, P.S. - Bagicha, District. Jashpur Chhattisgarh --- **Petitioner**

Versus

- State of Chhattisgarh through the Station House Officer, Police Station - Bagicha, Distt. Jashpur Chhattisgarh

--- **Respondent**

For the applicant	:	Mr. Awadh Tripathi, Advocate.
For the Respondent	:	Mr. Arvind Shukla, Panel Lawyer.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

25.04.2016

1. Apprehending arrest in connection with Crime No. 5 of 2016 registered at Police Station Bagicha, Distt. Jashpur (C.G) for the offences punishable under section 376 of IPC, the applicant has filed this application u/s 438 of the Code of Criminal Procedure for grant of anticipatory bail. A perusal of the case diary shows that apart from section 376 IPC, the allegation u/s 3(2)(v) of the SC/ST Act has been levelled.
2. As per the prosecution case, the victim who was married lady made a report that the applicant was known to her and on 25.12.2015 she came back to her maternal home to celebrate Christmas and on 29.12.2015, she went to attend marriage of Vinod Tirkey and while she was coming back from the marriage the applicant caught hold of her on the road, dragged her inside at a culvert

and thereafter committed sexual intercourse.

3. Learned counsel for the applicant submits that it is a clear case of consent and no offence can be attributed to this applicant. He further submits that the prosecutrix was was major and conscious married lady and looking to the way in which the offence is said to be committed, the version of prosecution is not plausible and false allegations have been levelled against the applicant, therefore, he may be enlarged on bail.
4. Per contra, learned State Counsel opposes the prayer for grant of bail. He further submits that under the facts of the case, offence under Section 3 (2) (v) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 would not be attracted as offence is not committed on the ground that victim belongs to a particular caste. He relied on the law laid down by this court in case of **Baldau Kaushik Vs. State of C.G.** reported in **2007(1) C.G.L.J 183**. He, therefore, submits that under these facts the applicant cannot be said to have committed the offence and bar under Section 18 of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 would not apply. He also submits that according to the statement of the prosecutrix it would amount to commission of rape as against her will she was subjected to forcible sexual intercourse.
5. Perused the statement of prosecutrix as also the map which is appended which shows that the applicant and prosecutrix travelled a distance of 65 meters from road

side wherein it is alleged that she was subjected to rape below a culvert.

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 'atrocities' is defined in Section 2(1)(a) of the special Act to mean an offence punishable under Section 3. This definition of the word "atrocities" 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 as also the fact

that the prosecutrix was a married lady it appears that prima facie no force was applied. Therefore, I am inclined to allow this bail application.

8. Accordingly, the 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 his executing a personal bond in sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the officer arresting him or the concerned Investigating Officer. The applicant shall also abide by the following conditions :-

- (i) that he shall make himself available for interrogation before the investigating officer as and when required;
- (ii) that he 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 any police officer;
- (iii) that he shall not act in any manner which will be prejudicial to fair and expeditious trial; and
- (iv) that he shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

C.c. as per rules.

Sd/-
GOUTAM BHADURI
JUDGE