

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC(A) No. 379 of 2016

Ajay Nirmalkar S/o Santosh Nirmalkar Aged About 23 Years R/o
Village Pendri, Police Station Pathariya, District Mungeli
(Chhattisgarh)

---- Applicant

Versus

State Of Chhattisgarh Through : The Station House Officer, Police
Station Pathariya, Civil & Revenue District Mungeli Chhattisgarh

---- Respondent

For applicant – Shri Rajeev Shrivastava and Shri Kamal Kishore Patel,
Advocate.

For Respondent/State –Shri Sumit Jhanwar, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

21/04/2016

1. This application under Section 438 of Cr.P.C. has been filed by the applicant apprehending his arrest in connection with Crime No. 66/2016 registered at Police Station Pathariya Civil and Revenue District Mungeli (C.G.) for offence punishable under Section 376 of the Indian Penal Code and Section 3 (2) (5) of the S.C./S.T Act.
2. As per the prosecution case a report was made by the victim that on 16/03/2016 the applicant has committed forceful sexual intercourse on the pretext of marriage. Report purports that before that applicant came in contact with the prosecutrix in November, 2015 and stated that he is in love with the prosecutrix and thereby many a times physical relation were established Eventually applicant refused to marry and the report was made.
3. Learned counsel for the applicant submits that the applicant and the prosecutrix stayed together and were in love relation and thereby might have developed physical relationship. It is stated that prosecutrix is a major girl aged about 21 years and therefore the offence cannot be said to

have been committed. 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.

4. Learned State counsel opposes the prayer for grant of bail and submits that on the pretext of marriage applicant has committed sexual intercourse, therefore offence is committed.

5. I have perused the statement and the report of the prosecutrix wherein it is stated that prosecutrix was in love relation with the applicant from 2015 and many a times physical relationship were established. 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.

6. Perusal of the statement would show that victim herself has stated that she was in love relation with the applicant. Considering the statement and also for the fact that the prosecutrix being major lady, I am inclined to extend benefit of anticipatory bail to the applicant.

7. 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 executing a personal bond in sum of Rs.25,000/- with one local 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) 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