

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.CR.C.(A). No. 404 of 2016

1. Somnath Mishra, S/o. Sewak Ram Mishra, aged about 56 years, R/o. Village-Girwar, Police Station – Gaurella, District-Bilaspur (C.G.)

----Applicant

Versus

1. State of Chhattisgarh, Through : the Police Station House Gaurella, District-Bilaspur (C.G.) (wrongly mentioned in cause title as a District - Mungeli)

---- Respondent

For Applicant : Mr. Ashok Soni, Advocate

For Respondent/State : Mr. Sumit Jhanwar, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

28/04/2016

1. Apprehending arrest in connection with Crime No.69/2016 registered at Police Station- Gaurella, District – Bilaspur (C.G.), for offence punishable under Section 376 of I.P.C. and 3 (1) (12), 3 (2) (5) of S.C. & S.T. (Prevention of Atrocities) Act, the applicant has preferred this application for grant of anticipatory bail.
2. As per the prosecution case, on 04.02.2016, the prosecutrix was working alongwith her husband and when the prosecutrix went to the pump house to fetch the soap at that time, the applicant caught hold of her and forcefully committed rape.
3. Learned counsel for the applicant would submit that the prosecutrix was married lady and she is residing alongwith the applicant for last four years and false allegations have been made at the behest of the husband as there is some dispute was existing in the village, therefore, false accusation has been made. Therefore, the applicant may be enlarged on anticipatory bail.

4. Per contra learned State counsel opposes the application for grant of anticipatory bail.
5. Perused the statement of the prosecutrix as also the husband of the prosecutrix, wherein it is stated that while the applicant was in compromising position, which was seen by the husband of the prosecutrix which lead to a dispute. Subsequently in the statement under Section 164 of Cr.P.C., it has been stated by the prosecutrix that she do not want to further prosecute the applicant as she has been kept by the applicant. 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 relation with the applicant for certain point of time. 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 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