

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC(A) No. 426 of 2016

Ashok Kumar Sahu S/o Indrasen Sahu Aged About 23 Years R/o.
Village Bhatheli, P.S. Bhakhara, Revenue & Civil District Dhamtari
Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through Office In Charge Police Station
Bhakhara, Revenue & Civil District Dhamtari Chhattisgarh

---- Respondent

For applicant – Shri Shishir Dixit, Advocate.
For Respondent/State –Shri Anant Bajpai, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

12/05/2016

1. This application under Section 438 of Cr.P.C. has been filed by the applicant apprehending his arrest in connection with Crime No. 39/2016 registered at Police Station Bhakhara, District Dhamtari (CG) offence punishable under Section 354 and 354A of IPC and 3(1)(11) of S.C.S.T. Atrocities Act.
2. As per the prosecution case on 1/01/2016 the present applicant outraged the modesty of the complainant and sexually assaulted her.
3. Learned counsel for the applicant submits that applicant was enlarged on bail on 15/03/2016 in M.Cr.C. No.1276 of 2016 and thereafter while filing challan offence under Section 3 (1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been added, thereby there is apprehension that again applicant would be arrested. Therefore, the applicant may be granted benefit of anticipatory bail.
4. Learned State counsel opposes the prayer for grant of bail.

5. I have perused the earlier order dated 15/03/2016 passed in M.Cr.C. No.1276 of 2016 by the coordinate bench of this court wherein applicant has been stated to have been enlarged on bail under Section 354 and 354A of IPC. Subsequently, section 3 (1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been added.

6. I have perused the statement of the victim. 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 fact that applicant was already enlarged on bail on the previous statement of the victim. Taking into such statement, I am inclined to extend benefit of anticipatory bail to the applicant.

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 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