

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 745 of 2016

- D.K.Soni S/O Late Ramji Prasad Soni Aged About 38 Years Occupation Advocate And R.T.I. Activist, Office - Navapara Ambikapur, District Sarguja Chhattisgarh, R/O. Village Chathrima, Banaras Road, Police Station Gandhinagar, Tahsil Ambikapur, District Sarguja Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through The Police Station Of The S C And S T/ A J A K Ambikapur, District Sarguja Chhattisgarh.

---- Respondent

For Applicant : Mr. Satish Chandra Verma, Advocate

For Respondent/State : Mr. Anil S. Pandey, Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

26-08-2016

1. This application under Section 438 of Cr.P.C has been filed by the applicant apprehending his arrest in connection with Crime No. 25 of 2016 registered at Police Station of the Scheduled Castes and Scheduled Tribes/AJAK Ambikapur, District Sarguja (CG) for offence punishable under Sections 294, 506 of the IPC and Section 3 (1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
2. As per case of the prosecution, a report was made by the complainant namely Mahendra Prasad against the applicant that the applicant holding the forged degree certificate and marks-sheet was practicing as a lawyer. Being enraged by the act of the complainant, applicant abused him in the name of caste and thereby the aforesaid offence was committed.

3. Learned counsel appearing for the applicant would submit that the applicant has been inculpated in a false criminal case because of the fact that the applicant, who is a practicing lawyer in the District Court had taken out the information of the fact that certain amounts which were distributed by the Home Minister of the Government fund, were made available to the persons who are financially sound, despite that just to do favour such funds were distributed. The applicant took out the information under Right to Information Act to ascertain the financial position of the recipients as Rs.16,44,000/- was distributed to various persons. Therefore, in order to counter attack the applicant, by Government machineries, the applicant has been falsely implicated in the case. He would further submit that report was obtained under Right to Information Act and information cash amount which was distributed to different persons was made available to the press also and therefore, the applicant being threatened by the Police. It is contended that one writ petition was filed by P.N. Dubey, practicing Lawyer of Ambikapur Court for and on behalf of the applicant which was registered as Writ Petition (IPIL) No. 58 of 2016 wherein all the grievances were pleaded and in the said PIL Division Bench of this Court had ordered on 30-6-2016 that in case the applicant is arrested or surrenders, then he shall be taken to the nearest hospital and should have been medically examined and information thereof shall also be given to P.N. Dubey, who had filed the PIL. Therefore, taking into back ground of the case, it would be relevant to note that false allegations have been attributed against the applicant as complainant Mahendra Prasad was not known to the applicant and in order to encounter the act of the present applicant, false allegations have been leveled against him. It is

further submitted that Division Bench of this Court had also observed at para 5 that if the application is filed by the present applicant, it may be disposed of as early as possible, therefore, the applicant may be granted benefit of anticipatory bail.

4. Learned State counsel opposing the prayer for grant of anticipatory bail would submit that as per report made by the complainant Mahendra Prasad, it would be evident that the applicant abused the complainant in the name of his caste, therefore, in view of the provisions contained in Section 18 of the Act, the application for grant of anticipatory bail is not maintainable and the same is liable to be rejected.
5. I have heard learned counsel for the parties and have perused the case diary and documents.
6. Perused the bunch of documents, order passed in Writ Petition (PIL) No. 58 of 2016 which would show that the applicant who is a practicing lawyer at Ambikapur Court, was extended the threat, therefore, writ petition was filed by P.N. Dubey, who is another practicing Advocate. Division Bench of this Court had made observation in the said writ petition and it was observed that if applicant is arrested or surrenders, then he shall be taken to the nearest hospital and got medically examined and information thereof shall also be given to P.N. Dubey. Perusal of the bunch of the documents and case diary would further show that the applicant had taken out the information under Right to Information Act which goes against Home Minister of the State wherein Rs.16,44,000/- was distributed to various persons and the particulars of the persons were also unearthed about their financial position. Subsequently, the matter was reported to press as it would be

evident from the documents. Perusals of the case diary also shows that report was made by one Mahendra Prasad initially which appears to be made on 10-6-2016 to Superintendent of Police about false L.L.B degree of the applicant, thereafter written report appears to have been made on 16-6-2016 by complainant Mahendra Prasad that the applicant abused him in the name of caste. Considering the facts in its entirety, 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. Taking into all the documents together, it appears that the applicant who is a practicing lawyer had taken out all the documents under Right to Information Act against the Home

Minister of the State wherein Government amounts were distributed to various persons whose names were also shown further. Considering the observations made by Division Bench of this Court on 30-6-2016 in Writ Petition (PIL) No. 58 of 2016 and facts involved in this case as appears custodial interrogation may not be required. In view of the facts, 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 his executing a personal bond in the 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

Raju