

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 963 of 2017

Ajay Nirmalkar, S/o. Santosh Nirmalkar, Aged About 24 Years, R/o. Village Pendri, Police Station Pathariya, District Mungeli, Chhattisgarh.

---- Applicant

Versus

1. State Of Chhattisgarh, Through the Police Station House Officer, Police Station Pathariya, District Mungeli, Chhattisgarh.
2. Ku. Preeti Bhargav, D/o. Prem Bhargav, Aged About 22 Years, R/o. Village Chorbhathhi, Police Station Pathariya, District Mungeli, Chhattisgarh.

---- Respondents

For Applicant : Mr. B.M. Roy, Advocate

For Respondent No.1 : Mr. Sangharsh Pandey, Dy. Govt. Advocate
/State

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

12.10.2017

Heard

1. This revision petition is against framing of charge under Section 376(2) & 323 of Indian Penal Code and under Section 3(2)(v) of Scheduled Caste/ Scheduled Tribes (Prevention of Atrocities) Act, 1989 (*for short "the SC/ST Act"*).
2. Learned counsel for the applicant would submit that while the applicant was extended the benefit of bail, it was observed by the Court that *prima facie* it was not known that the complainant belong to S.C./ST. and rape was committed, therefore, Section 3(2)(v) of the SC/ST Act would not attract in this case.
3. Perusal of the report and statement of the victim, at this stage, it cannot lead to draw inference that what was the intention. Any observation in the bail petition, which appears to be *prima facie* on

the record cannot be picked up to press in the motion while the evidence itself is to be appreciated during the course of trial.

4. The scope of interference and exercise of jurisdiction under Section 397 of Cr.P.C. was reiterated by their Lordship in case of ***State of Rajasthan v. Fatehkaran Mehdu***, reported in ***AIR 2017 SC 796***. It is stated that at the stage of framing of a charge, the Court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied.
5. Applying the aforesaid principles in this case after going through the charge sheet and the documents annexed thereto, at this stage, the defence adduced by the applicant cannot be accepted as gospel truth. The same has to be decided on the floor of the Court during evidence while they are tested by virtue of examination and cross examination.
6. Therefore, in view of the forgoing discussion, I am not inclined to interfere with the order of framing of charge at this stage. Accordingly, the revision petition is dismissed.

Sd/-
(Goutam Bhaduri)
Judge