

HIGH COURT OF CHHATTISGARH, BILASPURM.Cr.C.(A) No.81 of 2018

1. Birdichand Agrawal S/o Shri Prabhulal Agrawal, aged about 67 years,
 2. Narayan Agrawal S/o Birdichand Agrawal, aged about 52 years,
- Both are R/o S.P. Sweets R.S. Shukla Road, Raipur (CG)

-----Applicants

Versus

1. Ayodhya Prasad Suryavanshi S/o Shri Bhagbali, R/o Village : Dongakhoh, Police Station : Pamgarh, District Janjgir Champa (CG)
2. State of Chhattisgarh through Superintendent of Police, Bilaspur (CG)

---- Non-applicant

For Applicants	:	Mr.D.R.Agrawal and Mr.Dheerendra Mishra, Advocate
For Non-applicant No.1	:	None present despite service of notice
For Non-applicant No.2	:	Mr.R.N.Pusty, Govt.Advocate with Mr.Ashish Surana, P.L.

Hon'ble Shri Justice Sanjay K. AgrawalOrder on Board03/04/2018

1. Non-applicant No.1/complainant has filed a complaint under Sections 294, 506B, 384/34 of the IPC and Section 3 (1) (x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter called as "the Act of 1989") before the Chief Judicial Magistrate, Bilaspur. The Chief Judicial Magistrate by order dated 4.2.2003 took cognizance of the aforesaid offences and issued process against the applicants. The said process has been served to the applicants, pursuant to which, this anticipatory application has been preferred by the applicants herein.

2. Mr.D.R.Agrawal, learned counsel for the applicants, would submit that offence under Section 3 (1) (x) of the Act of 1989 of which cognizance has been taken by learned Chief Judicial Magistrate, Bilaspur is not competent to take such cognizance in view of Section 14 of the Act of 1989 relying upon a decision of this Court in the matter of **Smt.Achla D Sapre vs. Smt.Asha Mahilkar (Rajput) and another**¹. He would further submit that the order passed by learned Chief Judicial Magistrate, Bilaspur is without jurisdiction and without authority of law, therefore, it is a fit case where the jurisdiction barred by Section 14 of the Act of 1989 can be lifted and the applicants can be granted bail under Section 438 of the CrPC. He would also submit that in view of recent decision of the Supreme Court in the matter of **Dr.Subhash Kashinath Mahajan v. The State of Maharashtra and anr.** in Criminal Appeal No.416 of 2018 on 20.3.2018 without permission of the Senior Superintendent of Police the applicants cannot be directed to be arrested.
3. On the other hand, learned State Counsel would oppose the bail application.
4. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
5. In order to appreciate the submissions raised at the Bar, it would be proper to notice Section 18 of the Act of 1989 which reads as under:-

“18. Section 438 of the Code not to apply to persons committing an offence under the Act.- Nothing in Section 438

of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.”

6. A meaningful reading of the aforesaid provision would show that Section 438 of the CrpC has no application to a person who is an accused of having committed the offence under the Act of 1989. It further shows that the allegations made in the First Information Report must show that the said allegations attract the provisions of the Act of 1989. The question to be considered is whether merely on registration of an offence against an accused under the provisions of the Act of 1989, he cannot move a jurisdictional criminal court i.e., the High Court or the Court of Sessions for grant of anticipatory bail under any circumstances? In the matter of Vilas Pandurang and another Vs. State of Maharashtra and others², scope and ambit of Section 18 of the Act of 1989 came to be considered therein by Their Lordships of the Supreme Court as to whether the High Court or the Court of sessions can exercise the discretion to grant anticipatory bail when a case is registered against an accused under the provisions of the Act of 1989. It has been answered by Their Lordships as under:-

“9. Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been prima facie made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail.

10. The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no Court shall entertain application for

anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. Court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence. ”

7. Thereafter, the principle of law laid down in the aforesaid judgment (supra) was followed and reiterated by Their Lordships of the Supreme Court in **Bachu Das v. State of Bihar and others**³.
8. From the principles enunciated by Their Lordships of the Supreme Court in **Vilas Pandurang** (supra) and **Bachu Bas** (supra), it would appear that the jurisdictional Criminal Court invested with the discretion to grant anticipatory bail is not precluded from examining the allegation made in the First Information Report/complaint to find out whether prima facie, an offence under the provisions of the Act of 1989 is made out, but the Court is not supposed to examine the correctness/veracity of the allegation made in the First Information Report/complaint, but it can certainly be examined whether provisions of the Act of 1989 are attracted, when the allegations mentioned in the First Information Report/complaint are taken at its face value considering them to be true. In the present case, offence under Section 3 (1) (x) of the Act of 1989 has been registered against the applicants.

3 (2014) 3 SCC 471

9. It is correct to say that cognizance for offence under Section 3 (1) (x) of the Act of 1989 has been taken by learned Chief Judicial Magistrate on 4.2.2003.

10. This Court in **Smt.Achla D Sapre** (supra) has clearly held that the trial Magistrate/Judicial Magistrate has no jurisdiction to directly take cognizance of the offence under the Act of 1989 and it is the Special Court under Section 14 of the Act of 1989 who has jurisdiction under the Act of 1989 and held as under:-

“20. Thus, the trial Magistrate was not a Special Court notified by the State Government within the meaning of Section 14 of the Act of 1989 read with Section 193 of the CrPC. Therefore, learned Judicial / trial Magistrate had absolutely no jurisdiction to entertain and take cognizance of the offence under Section 3 (1) (x) of the Act of 1989. Even otherwise, the Special Courts constituted under Section 14 of the Act of 1989 have been empowered to take cognizance of the offence directly under this Act with effect from 1-1-2016 and learned Magistrate took cognizance of the offences under the Act of 1989 on 3-5-2014. Therefore, by no stretch of imagination, the impugned order directly taking cognizance of the offence under Section 3 (1) (x) of the Act of 1989, can be held to be the valid exercise of jurisdiction by learned trial Court, rather it is a case of exercise of jurisdiction by learned Magistrate not vested in it by law and it is held to be without jurisdiction and without authority of law.

21. Accordingly, it is held that the order dated 3-5-2014 passed by the trial Magistrate directly taking cognizance of the offence under Section 3 (1) (x) of the Act of 1989 is without jurisdiction and without authority of law and runs contrary to Section 14 of the Act of 1989 read with Section 193 of the CrPC and it is accordingly quashed. Resultantly, the order dated 15-4-2015 passed by the Court of Session affirming the order of learned Magistrate also stands quashed. However, respondent No.1 is at liberty to proceed in accordance with law, if so advised.”

11. Taking into consideration the facts and circumstances of the case, nature and gravity of the offence, evidence available on record, also taking into consideration the statements of complainant-Ayodhya

Prasad Suryavanshi, Mohd.Akhtar and Ramu @ Ramkumar Chouhan and going through the complaint alleged to be made by the complainant, this Court is inclined to extent the benefit of anticipatory bail in favour of the applicants.

- 12.** Accordingly, this application is allowed and it is directed that in the event of arrest of the applicants in connection with the aforesaid offences, they shall be released on bail by the officer arresting them on their executing a personal bond in the sum of ₹ 25,000/- each with one surety in the like sum to the satisfaction of the concerned Investigating/Arresting Officer. The applicants shall also abide by the following conditions:-

- (i) that they shall make themselves available for interrogation before the concerned Arresting/Investigating Officer as and when required;
- (ii) that they shall not, directly or indirectly, make any inducement, threat or promise to the 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 they shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that they shall also appear before the trial Court on each and every date given to them by the said Court till disposal of the trial.

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-