

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.(A) No.208 of 2018**

Keshav Agrawal, S/o Shri Rajendra Kumar Agrawal, aged bout 20 years,
resident of Agrasen Chowk, Korba, Tahsil and District Korba, Chhattisgarh

---- Applicant**versus**

State of Chhattisgarh through Police Station AZAK, District Korba,
Chhattisgarh

---- Respondent

For Applicant	:	Shri Sumit Jhanwar, Advocate
For Respondent	:	Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel**Order on Board****30.4.2018**

1. The Applicant is apprehending his arrest in connection with Crime No.36 of 2017 registered at Police Station Azak, District Korba for offences alleged under Sections 294, 323, 325, 506 of the Indian Penal Code and Section 3(2)(Va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (henceforth "the Prevention Act").
2. Facts of the case, in brief, are that on 4.9.2017 at 16:45 hours, Complainant Yash Chaturvedi, a member of Scheduled Caste intimated Police Station City Kotwali, Korba that at 16:40 hours he was beaten by the Applicant for a dispute relating to purchase of mobile handset through online process. This intimation was recorded in Rojnamcha Sanha No.37 on 4.9.2017. Later on, after inquiry, it was found that the Applicant had abused the Complainant in the name of his mother and sister. Therefore, offence under Sections 294, 323, 325 of the Indian Penal Code

and Section 3(2)(Va) of the Prevention Act was registered against the Applicant.

3. Learned Counsel appearing for the Applicant submits that all the offences alleged against the Applicant under the Indian Penal Code are bailable and only the offence alleged against him under the Prevention Act is not bailable. He further submits that initially the complaint was recorded in Rojnamcha Sanha No.37 on 4.9.2017 in which no allegation regarding abuse to the Complainant by the Applicant in the name of caste of the Complainant was recorded, but, about two months thereafter, as an after-thought, the allegation of abuse in the name of caste has been levelled against the Applicant and thus he has falsely been implicated. It is further submitted that after going through the contents of the First Information Report also, it is established that none of the ingredients of the offence alleged against the Applicant under the Prevention Act is made out. Therefore, the Applicant may be admitted to anticipatory bail.
4. Learned Counsel appearing for the State/Respondent opposes the submission put-forth by Learned Counsel for the Applicant. He draws attention of this Court to the provision contained in Section 18 of the Prevention Act stating that the present application under Section 438 of the Code of Criminal Procedure would not be maintainable in view of the said provision.
5. I have heard Learned Counsel appearing for the parties and perused the material available with due care.

6. The law in relation to entertaining an application under Section 438 of the Code of Criminal Procedure in such offences is well settled. The provision of Section 18 of the Prevention Act puts a complete bar against entertainment of an application for anticipatory bail where *prima facie* the contents of the First Information Report discloses the ingredients of commission of offence under the Prevention Act.
7. I have gone through the case diary. The entry in Rojnamcha Sanha No.37 made on 4.9.2017 regarding the complaint lodged by Yash Chaturvedi does not show that the Applicant used any word which would constitute the alleged offence against him under the Prevention Act. The First Information Report dated 23.11.2017 also does not show that the Applicant used any word which would constitute *mens rea* to humiliate to a member of Scheduled Caste or Scheduled Tribe in any place within public view. The FIR, thus, in my view, does not *prima facie* constitute any offence against the Applicant under the Prevention Act. It is settled law that where the Court is *prima facie* satisfied while considering an application under Section 438 of the Code of Criminal Procedure that at that stage a case of Section 3(2)(Va) of the Prevention Act would not be attracted, the Applicant may be released on bail under Section 438 of the Code of Criminal Procedure.
8. In view of the above facts and circumstances of the case, in my considered opinion, the Applicant is entitled to be released on anticipatory bail.
9. Accordingly, the bail application is allowed.

10. It is directed that in the event of arrest of the Applicant in connection with the aforesaid crime, he shall be released on anticipatory bail on furnishing a personal bond in the sum of Rs.10,000/- with one solvent surety for the like sum to the satisfaction of the Arresting Officer/Presiding Officer of the concerned Trial Court. He shall also abide by all the following terms and conditions:

- (i) He 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 from disclosing such fact to the Court,
- (ii) He shall not act in any manner which will be prejudicial to fair and expeditious trial, and
- (iii) He shall appear before the Trial Court on each and every date given to him by the said Court till disposal of the trial.

Sd/-
(Arvind Singh Chandel)
JUDGE