

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on : 07/05/2018****Order Delivered on : 16/05/2018****M.Cr.C.(A) No. 222 of 2018**

Ashok Kumar Singh Bhadouriya S/o late Narendra Pratap Singh Bhadouriya aged about 61 years, occupation – Service posted as Block Education Officer, Block-Odagi, R/o. Village – Odagi, P.S. & Tahsil Odagi, District Surajpur, Chhattisgarh.

---- Applicant**Versus**

State Of Chhattisgarh, Through- P.S. AJJAK, Surajpur, District-Surajpur, Chhattisgarh.

---- Respondent

For the Applicant	:	Shri A.N. Pandey, Shri Kabir Dixit and Shri A.R. Mishra, Advocates.
For the Respondent/State	:	Ms. Smita Ghai, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV ORDER**

1. Heard on application under Section 438 of the Code of Criminal Procedure, 1973.
2. It is submitted by counsel for the applicant that the applicant is apprehending arrest in connection with Crime No. 17 of 2016, registered at Police Station – AJJAK, Surajpur, District – Surajpur, Chhattisgarh for the offences punishable under Section 376 of the Indian Penal Code and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. This is the second bail application brought by this applicant under Section 438 of the Cr.P.C. The first bail application of the applicant was decided on merits by this Court in M.Cr.C. No. 1388 of 2016 vide order dated 12.12.2017.

4. It is submitted by counsel for the applicant, that one of the grounds on which the earlier bail application was rejected was that there is a record of previous criminal cases which have been prosecuted against him. It is further submitted that out of the previous cases only one case registered as Crime No. 45 of 2017 in police station Odagi is pending, whereas three other cases registered as Special Sessions Trial No. 60 of 2007, 122 of 2013 and 121 of 2013 have been decided and in all these cases the applicant had been acquitted. He has also been acquitted in Case No. 87 of 2007 by the concerned trial Court and in another case bearing Crime No. 7 of 2012 registered for the offences under Sections 354 and 506 of the IPC and Section 3(1)(11) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, this applicant was benefited with grant of anticipatory bail by this Court in M.Cr.C(A) No. 735 of 2012 and in this case also he has been acquitted. Further, in another case connected with Crime No. 8 of 2012 registered under Section 376 of the IPC and Section 3(1)(12) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the applicant was benefited with grant of anticipatory bail in M.Cr.C.(A) No.734 of 2012 and in this case he has been acquitted by the concerned Special Court. In the case related to Crime No.45 of 2017, this applicant had filed W.P.(Cr) No. 287 of 2017, in which stay order was granted and the said order is continuing till date.

5. An enquiry has been conducted by the Chief Executive Officer, Surajpur regarding complaint in Crime No. 45 of 2017 and according to the report submitted by him, it does not disclose any involvement of the applicant in the said alleged offence. Subsequent to his acquittal in the cases mentioned herein above, the applicant has been reinstated and posted as Block Education Officer at Block Odagi and he is also given the charge of Chief Executive Officer at Block Odagi. He has been placed under suspension on account of allegations against him by the prosecution in this case. This applicant had preferred Cr.M.P. No. 866 of 2017 praying for quashment of FIR No. 17 of 2016, in which this Court has passed an order dated 21.7.2017 staying the arrest of this applicant which is still in operation. Regarding the present case against this applicant, an enquiry has been conducted by the orders of the Collector, District Surajpur by a committee and the committee has submitted a report dated 1.3.2016 by which the applicant was exonerated from all the allegations against him.

6. It is further submitted that on the date of commission of offence in this case i.e. 6.7.2016, this applicant was not acting in capacity of Block Education Officer at Odagi and the prosecutrix was not a subordinate to him on that date. Hence, the story of the prosecution that the prosecutrix attended to his call is baseless, which shows that the applicant is falsely implicated. Whereas according to the material present, it appears that a conspiracy has been hatched against the applicant to falsely implicate him. Delay in lodging the FIR is one of the reasons to show that the case against the applicant is false. The only statement given by the prosecutrix is that she is the member of Scheduled Tribe and she was sexually molested by this applicant, by itself does not speak that the prosecutrix was molested

sexually for the reason that she belongs to Scheduled Tribe, hence, offence under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not made out. In view of the principles laid down by the Supreme Court in the case of **Vilas Pandurang Pawar and Anr. vs. State of Maharashtra and Ors.** reported in (2012) 8 SCC 795 as also in the case of **Dinesh vs. State of Rajasthan** reported in **2006(3) SCC 771**. Later on, in this regard the guidelines had been given in **Subhash Kashinath Mahajan vs. State of Maharashtra** in **SLP (Criminal) No. 5661 of 2017**. Hence, looking to the fact that this applicant had no previous conviction against him and it appears that the case against the applicant is concocted and also following guidelines in the case of **Joti Prasad vs. State of Haryana** reported in **(1993) Supp 2 SCC 497**, **Siddharam Satlingappa Mhetre vs. State of Maharashtra** reported in **(2011) 1 SCC 694**, **Arnesh Kumar vs. State of Bihar** reported in **(2014) 8 SCC 273**, it is prayed that the applicant be granted anticipatory bail.

7. Learned State counsel opposes the bail application and the submissions made in this respect. It is submitted that the first bail application of the applicant filed under Section 438 of the Cr.P.C. has been dismissed on merits after considering all the aspects of the case against the applicant. Hence, there is no change in circumstances and nothing was suppressed at the time when the earlier bail application was decided by this Court. The only fact noticed by this Court is that this applicant has been prosecuted earlier for various offences which cannot be denied by this applicant and only because of the fact that this applicant has been acquitted in some of the cases does not absolve him and the other grounds that have

been raised in this application regarding falsity of the case in the offence under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and that the story of the prosecutrix is improbable has been considered earlier by this Court. Hence, the applicant is not entitled for bail.

8. Heard counsel for both the parties and perused the case diary.

9. The anticipatory bail application of the applicant was decided on merits by this Court in M.Cr.C. No. 1388 of 2016 vide order dated 12.12.2017 by taking notice of each and every argument submitted in this behalf.

10. Considering the allegations made by the prosecutrix against this applicant and taking into consideration the fact that this applicant has been charged for similar offences earlier as well, this Court is of the firm opinion that this applicant does not deserve to be benefited with grant of anticipatory bail. Hence, considering all the submissions made with regard to this second bail application, I am of the view that nether there is any change in circumstances nor there is any fact that has been brought to the notice of this Court presently which has any bearing on the present situations. Hence, for these reasons, no reason is found to entertain and allow the application. Hence, this application is rejected.

11. Accordingly, the bail application filed under Sections 438 of the Cr.P.C. is rejected.

Sd/-

(Rajendra Chandra Singh Samant)
Judge