

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.(A) No.528 of 2018**

1. Smt. Beni Bai, W/o Babu Ram Rajput, aged about 58 years,
2. Smt. Savita, W/o Basant Singh Rajput, aged about 64 years,
3. Tareshwari, W/o Rajaram, aged about 38 years,

All are residents of Village Chorbhatthi, Outpost Dashrangpur, Police Station Pipariya, Tahsil Kawardha, District Kabirdham, Chhattisgarh

---- Applicants**versus**

1. Smt. Sunita Dhurve, W/o Shri Dogendra Dhurve, aged about 37 years, R/o Village Chorbhatthi, Outpost Dashrangpur, Police Station Pipariya, Tahsil Kawardha, District Kabirdham, Chhattisgarh
2. Vandana Dhurve, D/o Dogendra Dhurve, aged about 19 years, R/o Village Chorbhatthi, Outpost Dashrangpur, Police Station Pipariya, Tahsil Kawardha, District Kabirdham, Chhattisgarh
3. Ravi Lata, D/o Dogendra, aged about 14 years, Minor
4. Shrishti Dhurve, D/o Dogendra Dhurve, aged about 16 years, Minor,

(Non-Applicants No.3 and 4 through legal guardian mother Sunita Dhurve, W/o Dogendra Dhurve)

All residents of Village Chorbhatthi, Police Station Pipariya, Tahsil Kawardha, District Kabirdham, Chhattisgarh

5. State of Chhattisgarh, through District Magistrate Kabirdham, Deputy Police Superintendent AJAK, Police Station Kawardha, District Kabirdham, Chhattisgarh

---- Respondents

For Applicants	:	Shri Rajesh Kumar Sharma, Advocate
For Respondent No.5/State	:	Shri Satish Gupta, Govt. Advocate
For Objector/Respondent No.1	:	Shri F.S. Khare, Advocate

Hon'ble Shri Justice Arvind Singh Chandel**Order on Board****29.6.2018**

1. The Applicants are apprehending their arrest in connection with Crime No.59 of 2018 registered at Police Station Ajak, Kawardha, District Kabirdham for offences alleged under Sections 294, 323, 506 read with Section 34 of the Indian Penal Code and Section 3(1)(s) of the Scheduled Castes and the Scheduled Tribes

(Prevention of Atrocities) Amendment Act, 2015 (henceforth 'the PoA Amendment Act, 2015').

2. Facts of the case, in brief, are that on 2.3.2018, a written report was submitted by Complainant/Respondent No.1 Smt. Sunita Dhurve, a member of the Scheduled Caste alleging that on 2.3.2018 itself at about 6:00 p.m., the present Applicants and their family members came in her house and they threatened her of life, assaulted and abused her using filthy language in the name of her caste. They also assaulted her other family members. On the basis of the said report, the police registered the crime in question against the Applicants under Sections 294, 323, 506 read with Section 34 of the Indian Penal Code and Section 3(1)(s) of the PoA Amendment Act, 2015.
3. Shri Rajesh Kumar Sharma, Learned Counsel appearing for the Applicants submits that all the offences alleged against the Applicants under the Indian Penal Code are bailable and only the offence alleged against them under the PoA Amendment Act, 2015 is non-bailable. He further submits that after going through the contents of the First Information Report, it is established that none of the ingredients of the offence alleged against the Applicants under the PoA Amendment Act, 2015 is made out. As per the FIR, the incident took place inside the house of the Complainant/Respondent No.1, therefore, *prima facie*, no offence is made out against the Applicants under the PoA Amendment Act, 2015.
4. Learned Counsel appearing for the State/Respondent No.5 opposes the submission put-forth by Learned Counsel for the

Applicants. He draws attention of this Court to the provision contained in Section 18 of the PoA Amendment Act, 2015 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. Learned Counsel appearing for the Objector/Respondent No.1 adopts the arguments advanced on behalf of the State/Respondent No.5.
6. I have heard Learned Counsel appearing for the parties and perused the material available with due care.
7. 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 PoA Amendment Act, 2015 puts a complete bar against entertaining of an application for anticipatory bail where *prima facie* the contents of the First Information Report disclose the ingredients of commission of an offence under the PoA Amendment Act, 2015.
8. I have gone through the case diary and the other material available with due care. As per the FIR, the incident took place inside the house of the Complainant. Therefore, in the circumstance, *prima facie*, no offence is constituted against the Applicants under the PoA Amendment Act, 2015. 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(1)(s) of the PoA Amendment

Act, 2015 would not be attracted, the Applicants may be released on bail under Section 438 of the Code of Criminal Procedure.

9. In view of the above facts and circumstances of the case, in my considered opinion, the Applicants are entitled to be released on anticipatory bail.
10. Accordingly, the bail application is allowed.
11. It is directed that in the event of arrest of the Applicants in connection with the aforesaid crime, they shall be released on anticipatory bail on each of them 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. They shall also abide by all the following terms and conditions:
 - (i) They 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) They shall not act in any manner which will be prejudicial to fair and expeditious trial, and
 - (iii) They shall appear before the Trial Court on each and every date given to them by the said Court till disposal of the trial.

Sd/-
(Arvind Singh Chandel)
JUDGE