

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.809 of 2018**

Irsad Khan @ Ishu, S/o Late Mustak Khan, aged about 30 years, r/o Khutanpara, P.S. Baikunthpur, District Korea, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through Station House Officer, Baikunthpur, District Korea, Chhattisgarh

--- Respondent

For Applicant	:	Shri Awadh Tripathi, Advocate
For Respondent	:	Shri Ramakant Pandey, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

6.8.2018

1. With the consent of Learned Counsel appearing for the parties, the matter is heard finally.
2. Vide order dated 7.7.2018 passed by the Special Judge [under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (henceforth 'the Act')], Korea (Baikunthpur) in Special Criminal Case No.3 of 2017, the Special Judge has allowed the application moved by the prosecution under Section 439(2) of the Code of Criminal Procedure and cancelled the bail granted to the Applicant and ordered to take him in custody. Hence, this revision by the Applicant.
3. Facts of the case, in brief, are that on the basis of a report made by the prosecutrix, a trial is going on against the Applicant before the Special Judge (under the Act), Korea. Vide order dated 7.1.2017 passed in Case No.3 of 2017, the Special Judge allowed the application filed by the Applicant under Section 439 of the Code of

Criminal Procedure and released him on bail with certain conditions. During the course of trial, the prosecutrix and all other prosecution and defence witnesses were examined and the matter was fixed for final arguments. At that stage, the application under Section 439(2) of the Code of Criminal Procedure was moved by the prosecution. The said application was allowed by the Special Judge on the ground that after examination of the witnesses, the Applicant/accused has abused and threatened the prosecutrix and as such he has violated one of the conditions imposed upon him while granting him bail.

4. Learned Counsel appearing for the Applicant/accused submits that after examination of the prosecutrix, when the sister of the prosecutrix deposed in favour of the Applicant/accused then the prosecutrix made a complaint against the Applicant/accused with *mala fide* intention. He further submits that if any such alleged act has been done by the Applicant after the examination of the prosecutrix and other witnesses, a separate cause of action is available to the prosecutrix and she can move a separate complaint case therefor accordingly.
5. Learned Counsel appearing for the State supports the impugned order and submits that since the Applicant has violated one of the conditions imposed upon him for grant of bail, the Trial Court has rightly cancelled his bail.
6. I have heard Learned Counsel appearing for the parties and perused the material available with due care.
7. Admittedly, the bail was cancelled after examination of the

prosecutrix and all other prosecution and defence witnesses. Vide order dated 7.1.2017, the bail was granted to the Applicant/accused with certain conditions. One of the conditions was that the Applicant shall not make any inducement or give threat to the prosecutrix or any other witness. Since the alleged act of threatening has been done by the Applicant after examination of the prosecutrix and all other prosecution and defence witnesses, in the circumstance, it cannot be said that the Applicant has violated any of the conditions imposed upon him for his release on bail. Since the prosecutrix has already been examined and the Applicant did the alleged act after her examination, she has a separate cause of action and she can move a separate complaint case accordingly before the competent authority/Court. Therefore, I am of the considered opinion that the impugned order is not in accordance with law.

8. Consequently, the revision is allowed. The impugned order dated 7.7.2018 is set aside. It is directed that the Applicant shall be released on bail by the Trial Court forthwith.
9. A copy of this order be sent to the Trial Court forthwith.

Sd/-
(Arvind Singh Chandel)
Judge