

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.(A) No. 1011 of 2019**

1. Suresh Kumar Jagatramka S/o Late Shri Banwarilal Jagatramka Aged About 62 Years R/o Gandhi Chowk, Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh
2. Smt. Sarita Devi Jagatramka W/o Suresh Kumar Jagatramka Aged About 57 Years R/o Gandhi Chowk, Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh
3. Yogesh Kumar Jagatramka S/o Suresh Kumar Jagatramka Aged About 30 Years R/o Gandhi Chowk, Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh

---- Applicants**Versus**

State Of Chhattisgarh Through Station House Officer, P.S. City Kotwali,
District- Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh.

---- Respondent

For the Applicants	:	Shri Shailesh Ahuja, Advocate with Shri Arvind Dubey and Shri Suresh Kumar Jagatramka, Advocates.
For the Respondent/State	:	Shri Lav Sharma, P.L.
For the Objector	:	Shri Hari Agrawal, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****04.07.2019**

1. Heard on application under Section 438 of the Code of Criminal Procedure, 1973.
2. This is the first bail application filed under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail to the applicants who are apprehending arrest in connection with Crime No. 408 of 2019, registered at Police Station – City Kotwali, District Raigarh, Chhattisgarh for the offence punishable under Sections 294, 506 and 323/ 34 of the Indian

Penal Code and Section 3(1) (a, r& s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. It is submitted by counsel for the applicants that they have been falsely implicated in this case. A false FIR has been lodged in this case in which the complainant is an employee of the builder - Inderpal Singh Bhatia, who has been used by his employer. There is a civil dispute between the applicants and the builder - Inderpal Singh Bhatia regarding which, the applicants' side has made several complaints to the authorities as the builder is making an attempt to encroach upon the vacant land of the applicants. The incident that has occurred in this case on 16.3.2019 regarding which, the complaints were filed by the applicants against the builder. Subsequent to that, after passing of about more than two months, making use of the social status of the complainant in this case, a complaint was filed on 30.5.2019 on the basis of which, FIR has been registered in this case. The applicants were unaware of the social status of the complainant at the time of incident and the applicants were in fact present on the spot to object to the encroachment that was being made by the builder. Applicants No. 1 and 3 are practicing advocates who are well aware of the legal consequences, therefore, it is totally improbable that they have committed such kind of alleged offence. Hence, it is prayed that the applicants be benefited with grant of anticipatory bail.

4. Learned State counsel opposes the bail application and the submissions made in this respect. It is submitted that according to the complaint filed there are specific allegations that the complainant who is a member of the Scheduled Caste has been insulted intentionally by his caste

name therefore, the application filed under Section 438 of the Cr.P.C. cannot be entertained in view of the bar under Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Hence, the applicants are not entitled for grant of anticipatory bail.

5. Learned counsel for the Objector adopted the arguments submitted by the State counsel. It is submitted that the complainant in this case is the person belonged to marginalized section of the society. He has been deliberately insulted by the applicants on the basis of social status knowing well that he is a member of the scheduled caste. In this case there is evidence present to make out a *prima facie* case therefore, in view of the directions in the case of **Dr. Subhash Kashinath Mahajain vs. State of Maharashtra and Another** reported in **(2018) 6 SCC 454**, the anticipatory bail cannot be extended to the applicants. Hence, the applicants are not entitled for grant of anticipatory bail.

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

7. FIR has been lodged by complainant – Dharmpal Kurrey alleging that on 16.3.2019 when the complainant was present on the spot, the applicants arrived there and objecting that how he was entered in their property and then abused, threatened and assaulted him and also by calling his caste name insulted him, on that basis the offences have been registered against the applicants.

8. Considered the material present in the case-diary and also perused the documents filed alongwith the application from which it appears that the

complaints have been filed by the applicants' side against the builder complaining that their land is being encroached by the builder. It also appears to be admitted that the complainant is an employee of builder – Inderpal Singh Bhatia. Therefore, the submission from the applicants' side that he has been used by the builder is a point which needs consideration. After overall consideration and the facts and circumstances in this case, I am of the view that the real cause of dispute is the construction that is going on, which according to the applicants is being done by encroaching upon the land of their ownership and there are facts reflecting the dispute present. Secondly, the FIR has been lodged after sufficient delay. Therefore, under these circumstances, I am of the considered view that the present is a fit case where the applicants should be benefited with grant of anticipatory bail.

9. Accordingly, the anticipatory bail application is allowed and it is directed that in the event of arrest of the applicants in connection with the aforesaid offence, they shall be released on bail by the Officer arresting them on executing a personal bond in sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Investigating Officer. They shall also abide by the following conditions:

- '(i) that the applicants shall make themselves available for interrogation before the Investigating Officer as and when required;
- (ii) that the applicants 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 them from disclosing such facts to the Court or to any police officer;
- (iii) that the applicants shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and

- (iv) that the applicants shall appear before the trial Court on each and every date given to them by the said Court till disposal of the trial.'

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Nimmi