

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 674 of 2020**

- Suraj Ravi S/o Ram Subhag Aged About 21 Years R/o Sidhma Police Chowki Bariyon, Police Station Rajpur District Balrampur Ramanujganj Chhattisgarh.
---- **Appellant**

Versus

- State Of Chhattisgarh Through The Police Station Sankargarh, District Balrampur Ramanujganj , Chhattisgarh.
---- **Respondent**

For Appellant : Shri Jitendra Shrivastava, Advocate
 For State : Shri Fouzia Mirzia, Addl. A.G.
 Shri Manoj Tirkey, SDO(P) of Kusumi is also present in the Court.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****19/11/2020**

Heard.

1. This appeal has been filed by the appellant against order dated 06.08.2020, whereby his appeal under Section 438 CrPC for grant of anticipatory bail has been rejected.
2. The appellant is apprehending his arrest in connection with Crime No.113/2019 registered at Police Station- Sankargarh, District- Balrampur- Ramanujganj (CG) for the offence punishable under Sections 363, 365, 115, 376(2)(n), 34 of I.P.C. and Section 3,4,5,6 of POCSO Act, 3(2)(V) of SC/ST Act.
3. Prosecution case is that the prosecutrix is aged above 17 years and she was abducted by Mithu Ram and Heeramati Ravi and Rahul Das. She was kept in jungle. Later on , she was compelled to appear before the Court for marry with the co-accused Deepak Giri, in which, Rahul Das also assisted. It is alleged that thereafter, the prosecutrix was kept in unlawful confinement by Mithu Ram and Heeramati Ravi for sometime and she was subjected to rape by co-accused Deepak. As far as present appellant is concerned the allegation is that at the time, when Mithu Ram was not present, the present appellant Suraj with Heeramati used to keep the prosecutrix in unlawful confinement.
4. Learned Court below has rejected bail application of the present appellant, taking into consideration the allegations contained in 164 CrPC statement of

the prosecutrix that she was being administered drugs and in the absence of accused Mithu Ram accused Suraj used to come, in view of the provision contained under Section 18 of the SC/ST Act.

5. Learned counsel for the applicant would argue that the learned Special Judge has rejected the bail application without properly examining the material on record, ignoring that the appellant was not involved in the alleged commission of offence at the first instance, when the prosecutrix's 161 CrPC statement was recorded. After she was recovered, the prosecutrix had given 164 CrPC statement before the Magistrate on 13.08.2019 in which also, she did not, at all, involve the present applicant. It was after more than two months, the father of the prosecutrix lodged complaint before the Superintendent of Police, in which, for the first time, name of the present applicant was mentioned. Thereafter, another 164 CrPC statement of the prosecutrix was recorded on 14.2.2020, in which, for the first time, the prosecutrix named the present applicant. It is also submitted that if, at all, the appellant was involved in the case, there was no reason for the prosecutrix to hide the name of the present appellant in her first 161 CrPC statement and 164 statement, though, she mentioned name of four other co-accused very explicitly and clearly.

His next submission is that learned Special Judge rejected the bail application keeping in forefront the provision contained in Section 18 of the SC/ST Act without any reference of recent judgment pronounced by Hon'ble Supreme Court in the Case of **Prithviraj Chouhan Vs. Union of India** in **WPC No. 1011 of 2018** decided on **10.02.2018**, where it has been clearly held that in cases where prima facie case is not made out, the bar created under Section 18 and 18 A (I) of the Act excluding provisions of Section 438 of the Code of Criminal Procedure (Anticipatory Bail), shall not apply.

6. On the other hand learned State counsel submits that firstly there is bar under Section 18 of SC-ST Act, which clearly speaks out that nothing in Section 438 of the Code will apply in relation to arrest of any person, on an accusation of having committed an offence under SC-ST (Atrocities Act). He next submitted that the prosecutrix has not involved the name of present applicant in her previous 161, 164 CrPC statements but father of the prosecutrix in his complaint dated 14.10.2019 made before the Superintendent of Police has submitted that police has not taken action against the co-accused Suraj despite name of the Suraj was also mentioned. Thereafter, when the prosecutrix was again produced before the Magistrate, again, her 164 Cr.P.C. statement was recorded, wherein she clearly involved the present appellant by stating that while she was kept in unlawful confinement, she was subjected to

rape and at times, in place of Mithu Ram applicant used to remain present. Therefore, involvement of the present appellant is also there. Therefore, it is not a case of exceptional nature for invoking jurisdiction to grant anticipatory bail under Section 438 of CrPC.

7. I have heard learned counsel for the parties and perused the records. The prosecutrix is stated to be aged between 17 to 18 years as per Dakhil Kharij Register and it is also contained in charge-sheet. The incident in which, allegedly, the prosecutrix was abducted is of 07.07.2019. When the prosecutrix was recovered, later on, her 161 CrPC statement was recorded by police on 30.08.2019. Though, she gave details of the manner in which she was abducted and compelled to marry with co-accused Deepak and subjected to rape, thereafter, kept in wrongful confinement, it is clear that there is no mention of the present appellant. Thereafter on that very date, her 164 CrPC statement was also recorded before the Magistrate. In that statement, she narrates the entire story, the manner she was abducted and she stated it in oral detail. She has also revealed specific names of the accused. After about two months, her father filed a complaint in the office of Superintendent of Police on 14.10.2019 in which, for the first time, he mentioned the name of the present appellant alongwith other co-accused who were already named. However, in this complaint, there is nothing to suggest, as to why, name of the present appellant was not disclosed earlier. Therefore, there is considerable force in the submissions of learned counsel for the appellant that present is a case of false implication by the father of the prosecutrix and by the prosecutrix. There is no such records, no reason has been stated as to why she did not state name of the present appellant in her first 161 and 164 CrPC statements.
8. In the recent pronouncement in the case of **Prithvi Raj Chauhan** (supra) of India, Hon'ble Supreme Court has considered legal positions with regard to maintainability of prayer for anticipatory bail as given below:-

“5. In *State of M.P. & Anr. v. Ram Kishna Balothia & Anr.*, (1995) 3 SCC 221, this Court has upheld the validity of section 18 of the Act of 1989. This Court has observed:

“6. It is undoubtedly true that Section 438 of the Code of Criminal Procedure, which is available to an accused in respect of offences under the Penal Code, is not available in respect of offences under the said Act. But can this be considered as violative of Article 14? The offences enumerated under the said Act fall into a separate and special class. Article 17 of the Constitution expressly deals with abolition of 'untouchability' and forbids its practice in any form. It also provides that enforcement

of any disability arising out of 'untouchability' shall be an offence punishable in accordance with law. The offences, therefore, which are enumerated under Section 3(1), arise out of the practice of 'untouchability.' It is in this context that certain special provisions have been made in the said Act, including the impugned provision under Section 18, which is before us. The exclusion of Section 438 of the Code of Criminal Procedure in connection with offences under the said Act has to be viewed in the context of the prevailing social conditions which give rise to such offences, and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in the prosecution of these offenders, if the offenders are allowed to avail of anticipatory bail. In this connection, we may refer to the Statement of Objects and Reasons accompanying the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Bill, 1989, when it was introduced in Parliament. It sets out the circumstances surrounding the enactment of the said Act and points to the evil which the statute sought to remedy. In the Statement of Objects and Reasons, it is stated:

"Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations, and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social, and economic reasons.

2. ... When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self-respect or honour of their women, they become irritants for the dominant and the mighty. Occupation and cultivation of even the Government allotted land by the Scheduled Castes and Scheduled Tribes is resented, and more often, these people become victims of attacks by the vested interests. Of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Caste persons eat inedible substances like human excreta and attacks on and mass killings of helpless Scheduled Castes and Scheduled Tribes and rape of women belonging to the Scheduled Castes and the Scheduled Tribes.... A special legislation to check and deter crimes against them committed by non-Scheduled Castes and non-Scheduled Tribes has, therefore, become necessary."

The above statement graphically describes the social conditions which motivated the said legislation. It is pointed out in the above Statement of Objects and Reasons that when members of the Scheduled Castes and Scheduled Tribes assert their rights and demand statutory protection, vested interests try to cow them down and terrorise them. In these circumstances, if anticipatory bail is not made available to persons who commit such offences, such a denial cannot be considered as unreasonable or violative of Article 14, as these offences form a distinct class by themselves and cannot be compared with other

offences.

7. We have next to examine whether Section 18 of the said Act violates, in any manner, Article 21 of the Constitution, which protects the life and personal liberty of every person in this country. Article 21 enshrines the right to live with human dignity, a precious right to which every human being is entitled; those who have been, for centuries, denied this right, more so. We find it difficult to accept the contention that Section 438 of the Code of Criminal Procedure is an integral part of Article 21. In the first place, there was no provision similar to Section 438 in the old Criminal Procedure Code. The Law Commission in its 41st Report recommended introduction of a provision for grant of anticipatory bail. It observed:

“We agree that this would be a useful advantage. Though we must add that it is in very exceptional cases that such power should be exercised.” In the light of this recommendation, Section 438 was incorporated, for the first time, in the Criminal Procedure Code of 1973. Looking to the cautious recommendation of the Law Commission, the power to grant anticipatory bail is conferred only on a Court of Session or the High Court. Also, anticipatory bail cannot be granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. It cannot be considered as an essential ingredient of Article 21 of the Constitution. And its non-application to a certain special category of offences cannot be considered as violative of Article 21.

10. It was submitted before us that while Section 438 is available for graver offences under the Penal Code, it is not available for even “minor offences” under the said Act. This grievance also cannot be justified. The offences which are enumerated under Section 3 are offences which, to say the least, denigrate members of Scheduled Castes and Scheduled Tribes in the eyes of society and prevent them from leading a life of dignity and self-respect. Such offences are committed to humiliate and subjugate members of Scheduled Castes and Scheduled Tribes with a view to keeping them in a state of servitude. These offences constitute a separate class and cannot be compared with offences under the Penal Code.”

9. Therefore, bar under Section 18 of the SC/ST Act may not come in the way of granting benefit of Anticipatory Bail to a deserving accused and present is one such case. Therefore, in the considered opinion of this Court, interest of justice demand that the appellant should be admitted to the benefit of anticipatory bail..

10. Accordingly, the appeal is allowed. Impugned order is set aside, it is directed that the in the event of arrest, the appellant shall be released on bail, on his furnishing a personal bond in the sum of Rs.25,000/- with two local sureties for the like amount to the satisfaction of the arresting officer, with following further conditions that:-

a) the appellant shall make himself available for interrogation by the police officer as and when required;

b) the appellant 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 facts to the Court or to any police officer;

Certified copy as per rules.

Sd/-

(Manindra Mohan Shrivastava)
Judge