

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 804 of 2020**

- Sarabjeet Kaur Wife Of Harpreet Singh Aged About 40 Years R/o Saket Nagar, Kohka, Bhilai, District Durg (Chhattisgarh). ---- **Appellant**

Versus

- State of Chhattisgarh Through District Magistrate Durg, District Durg (Chhattisgarh) And Also Through Police Chowki- Smriti Nagar, Police Station- Supela, District- Durg (Chhattisgarh), ---- **Respondent**

For Applicant	:	Mr. Pushpendra Kumar Patel, Advocate
For State	:	Mrs. Fouzia Mirza, AAG.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order on Board**16-12-2020**

Heard.

- 1) This appeal has been preferred under Section 14(A) (i) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "the Act, 1989") against the impugned order dated 31-7-2020 passed by learned Special Judge/Additional Sessions Judge, District Durg (CG) in Bail Application No.1078 of 2020, whereby the Special Judge/Additional Sessions Judge has rejected bail application of the appellant preferred under Section 438 of Cr.P.C. which relates to Crime No. 375 of 2020, registered at Police Station Supela (Chowki Smriti Nagar), District Durg (C.G.) for the offence punishable under Sections 294, 506, 323, 34 of IPC and Section 3 (1) (x) of the Act, 1989.
- 2) Case of the prosecution, in brief, is that the complainant belonging to Scheduled Tribe category, lodged a report in Police Station stating that the complainant and the appellant had entered into an agreement of

sale under which the appellant/accused agreed to sell her house to the complainant and Rs.1,50,000/- was taken as advance. It is also alleged that Rs.13,350/- was also paid for mobile. Later on, when the complainant came to know that the house was constructed without due permission of the local body, the agreement was cancelled. The complainant, then went to the house of the appellant to get back the advance money and also Rs. 13,350/-, but at that time, the appellant started hurling abuses using filthy language and intentionally insulting the complainant and his family members in their caste name. The complainants were also assaulted.

The trial Court considering that the allegations were prima face made out in offence punishable under Section 3 (1)(x) of the Act, 1989, there is a bar under Section 18 of the Act, 1989, rejected the bail application of the appellant. It is against this order, present appeal has been preferred.

3) Assailing the legality and validity of the impugned order, learned counsel for the appellant would argue that the court below erred in law in holding that prima facie case is made out, barring maintainability of the bail application. He would submit that even if the entire complaint is taken on its face value, there is no material to show that the genesis of insult and abuse was for the reason that the complainant belongs to Scheduled Tribe. He would submit that even according to the complainant, an agreement of sale of appellant's property was entered into and advance was paid to the appellant. For some reason, the complainant did not want to proceed with the purchase under agreement of sale and they started avoiding purchase and in that connection they came to the house of the present appellant. It is not a case where the appellant went to the house of the complainant. Even according to the complainant, the incident of so

called assault, abuse, insult or intimidation is said to have taken place in the house of the appellant and it is nowhere stated that the incident took place in any place within public view. Therefore, on the face of it, the essential ingredients of commission of offence of insult or intimidation and that too in a place within public view, are not made out. Therefore, it is a case of exceptional nature where despite bar under Section 18 of the Act, 1989, the benefit of anticipatory bail ought to be admitted to the present appellant.

It is argued that the provisions of the Act, 1989 have been added only to somehow make the criminal over-tact brought under a non-bailable offence so as to exert pressure to return the advance taken by the appellant under agreement of sale.

4) On the other hand, learned State counsel referring to the contents of FIR and the statement of the complainant and other witnesses, would submit that though the dispute of the parties began in the back drop that the complainant wanted to cancel the agreement of sale and was demanding refund of advance money, in that course of dispute and quarrel, the appellant started hurling abuses using filthy language, therefore, prima facie, it shows that insult or intimidation was intentional because the complainant belongs to Scheduled Tribe category. The complainant has also stated in clear words that all this happened in a public place. Therefore, the learned trial court rightly rejected the bail application as not maintainable in view of bar under Section 18 of the Act, 1989.

Learned State counsel would argue that ordinarily there is a bar to grant of anticipatory bail in such matters and the legislature has come out with such provisions to protect the persons belonging to Scheduled

category suffering exploitation, harassment, intimidation for the reason that they belong to the down trodden class, who have been subjected to humiliation and harassment.

5) As to whether the application for grant of anticipatory bail would be maintainable or not, in cases where there is allegation of commission of offence under ST & SC Act, 1989 has been considered by this court and also by the Hon'ble Supreme Court time and again.

6) At first, it is relevant to refer the recent judicial pronouncement of the Supreme Court in the case of **Prithvi Raj Chauhan vs. Union of India and others, 2020 (4) SCC 727**, wherein it has been held that bar under Section 18 is not absolute and in appropriate cases where prima facie case is not made out, benefit of anticipatory bail could be admitted, despite bar under Section 18, in the aforesaid decision, it was held:

“11. Concerning the applicability of provisions of Section 438 Cr.P.C., it shall not apply to the cases under the 1989 Act. However, if the complaint does not make out a prima facie case for applicability of the provisions of the 1989 Act, the bar created by Section 18 and 18-A (I) shall not apply. We have clarified this aspect while deciding the review petitions”.

7) In view of settled legal position, as stated in the recent judicial pronouncement of the Supreme Court in the case of Prithvi Raj Chauhan (supra), one thing is clear that grant of anticipatory bail even cases where there are accusations for commission of offence under Section ST & SC Act, is not totally barred. However, the benefit of anticipatory bail could be extended only in exceptional nature in terms of the observations made by the Hon'ble Supreme Court as above, where it is found that no prima

facie case is made out.

As to whether the prima facie case is made out or not, it would be depend upon the contents of the allegation. While considering as to whether prima facie case is made out, it has to be seen whether the complaint even if taken on its face value, prima facie, makes out the case, there being present, essential ingredients of the offence alleged. In a case where a bare reading of the complaint and accusation contained therein, even if it is taken on face value, do not make out prima facie case, because essential ingredients of offence are not spelt out or highly improbable, in such circumstances, the benefit of anticipatory bail could be extended.

8) Applying the aforesaid principles, if this court looks into the contents of the FIR and other statements, it is quite apparent that the appellant and the complainant had entered into an agreement for sale of property and the complainant paid Rs.1,50,000/- as advance and another Rs.13,350/- towards cost of mobile. Even according to the complaint, the complainant was no longer interested in proceeding to purchase the property for the reason that according to his belief, the house was constructed without proper permission from the local body which, later on, came to the notice of the complainant, therefore, the complainant was avoiding the agreement. Even according to the complainant, the complainant had gone to the house of the appellant informing the cancellation of agreement and for return of advance money. According to the complainant, in the house of the appellant, when complainant met the appellant, the appellant and her family members got enraged and started hurling abuses. This back ground in which the dispute started between the parties, prima facie, shows that all it was not done because the

complainant belongs to reserved category. The back drop of the dispute was the agreement of sale which the complainant was not willing to proceed with and perhaps, the appellant was also not inclined to return the advance amount received by her. Further more, even according to the complainant, the incident is said to have happened in the house of the appellant. This is not a place in public view.

The complainant had only stated that the incident happened in a public place. This itself, *prima facie*, shows that a deliberate attempt was made to somehow rope in the appellant on allegation of commission of offence under Section 3 (1)(x) of the Act, 1989. Which was the public place where the incident happened, has not been stated in the complaint or FIR or in the diary statement.

In order to make out a *prima facie* case under Section 3 (1)(x) of the Act, 1989, the requirement is that the insult or intimidation had to be intentional with intent to humiliate a member of Scheduled Caste or Scheduled Tribe. The second limb of essential ingredients is that all this is alleged to have happened in any place within public view. It has to be noticed that the legislature has used words “in any place within public view” and not the words “public place”.

In a given situation, if the place is not public place, it may be categorized as place within public view and that will make out the case. However, in the present case, the incident is said to have happened in the house of the present appellant. Which was the public place where the incident happened, has not been stated anywhere. There is no allegation that, during alleged criminal act, some persons, outsiders, were also present and watching the incident.

9) On aforesaid consideration, this court is of the view that even if the complaint is taken on its face value, the essential ingredients of insult or intimidation in any place within public view are not made out. Therefore, it is a fit case for grant of anticipatory bail despite bar under Section 18 of the Act, 1989. Learned court below while taking the application for grant of anticipatory bail, did not consider the application in its proper perspective or the recent judicial pronouncement of the Supreme Court in the case of Prithvi Raj Chauhan (supra) and even in earlier judgments, nor it considered whether the essential ingredients of offence, prima facie are made out, therefore, the impugned order is bad-in-law and same is set aside.

10) Accordingly, the appeal is allowed and it is directed that in the event of arrest of the appellant in connection with the aforesaid offence, she shall be released on bail on her furnishing a personal bond in the sum of Rs.25,000/- along with one local surety for the like amount to the satisfaction of the arresting officer and the applicant shall abide by all the following terms and conditions -

(I) that the applicant shall make herself available for interrogation by a Police Officer as and when required;

(ii) that she 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.

Certified copy as per rules.

Sd/-
(Manindra Mohan Shrivastava)

Judge

Raju