

HIGH COURT OF CHHATTISGARH : BILASPUR**CRA No.796 of 2020**

- Yogeshwar Sahu S/o Dihuram Sahu, Aged About 32 Years R/o Fuljhar, Police Station Fingeshwar, Tahsil Rajim, District Gariyaband, Chhattisgarh, District : Gariyabandh, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through The Station House Officer, Police Station Fingeshwar, District Gariyaband, Chhattisgarh, District : Gariyabandh, Chhattisgarh

--Respondent**Single Bench: Hon'ble Shri Manindra Mohan Shrivastava, J.**

 Present: - Shri K. K. Pandey, counsel for the applicant.
 Shri Lalit Jangde, GA for the State.

ORDER ON BOARD
 (Passed on 11-12-2020)

 Heard.

1. The appellant has preferred this criminal appeal under Section 14(A)(ii) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (In short "the Act of 1989"), apprehending his arrest in connection with Crime No.156/2020, registered at Police Station Fingeshwar, District Gariyaband for alleged commission of offence under Section 294, 506, 509-B of IPC and Section 3(1)(घ) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.
2. Case of the prosecution is that the appellant insulted the prosecutrix, who belonged to Scheduled Tribe and intimidated her with an intention to humiliate her in a place within public view. It has also been

alleged that the appellant has also abused the prosecutrix in a place, which was within public view in a panchayat meeting.

3. FIR was lodged by the prosecutrix alleging that the present appellant insulting the prosecutrix in a public place by using the word, “mentally retarded, rustic and that she had no capacity to carry out development”. It was further alleged that the prosecutrix was subjected to indecent behaviour and abused in the name of caste and the appellant is spreading wrong message and video in social media by falsely claiming himself to be a Journalist. The prosecutrix is Sarpanch and therefore, use of such words spoken against her in a place within public view, were made a basis for registering offence. On application for grant of anticipatory bail being filed before the trial Court, the same was rejected by the trial Court, giving rise to this appeal.

4. Learned counsel for the appellant would argue that irrespective of ingredients of commission of offence under Section 294, 506, 509(B) of the IPC, in which, allegations against the appellant as contained in the FIR and the case diary statement, even if taken on its face value, did not make out a prima facie case of commission of offence under Section 3(1) (R) & (S) of the Act of 1989. He would submit that even if the appellant is assumed to have spoken such words out of disgust, branding the prosecutrix as mentally retarded, rustic and having no capacity to carry out development, is wholly unconnected with the caste status of the prosecutrix. It is next submitted that there is nothing in the report to show that any intimidation was given for the reason that the prosecutrix belonged to Schedule Tribe. He would also argue that the basis for making allegations of abuse is not made out, because in the entire FIR or any other statement, it is not stated what abusive word was used in the

name of caste, to which the prosecutrix belongs, in a public view. It is submitted that no abusive word is mentioned anywhere and general allegations have been made, hurling abuses without connecting with the caste status of the prosecutrix. Therefore, even if the allegations are taken as it is, irrespective of ingredients of commission of offence under the IPC, no case of registration of offences under Section 3(1)(r) & (s) of the Act of 1989 is made out, therefore, the appellant is apprehending his arrest and praying for grant of anticipatory bail, because, rest of the offences are bailable in nature.

5. On the other hand, learned State counsel would argue that the manner, in which, the appellant has been insulted and humiliated the prosecutrix by alleging that she is mentally retarded, rustic and she has no capacity to carry out development, reflects state of mind, in which, utterances were made. He would submit that the appellant has used insulting language against the prosecutrix, who is holding the office of the Sarpanch of Gram Panchayat and even though, no specific abusive word has been used, humiliating words used against the prosecutrix, taken together, prima facie make out ingredients of commission of offence under Section 3(1)(r) & (s) of the Act of 1989, therefore, in view of bar created under Section 18 of the Act of 1989, anticipatory bail application is not maintainable and therefore, the trial Court has rightly rejected the bail application.

6. I have heard learned counsel for the parties and perused records.

7. At first, it is relevant to refer the recent judicial pronouncement of the Supreme Court in the case of ***Prathvi Raj Chauhan Vs. Union of India & 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.PC, 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 Sections 18 and 18- A(i) shall not apply. We have clarified this aspect while deciding the review petitions.”

8. The entire case, as is reflected from the FIR, case diary statement and statement recorded under Section 164 of Cr.P.C. is that the appellant, who claims to be a Journalist, has been making serious allegations and also used words like mentally retarded, rustic and having no capacity to carry out development against the prosecutrix. Certainly, these words are insulting. However, the utterances, which has been reproduced in the aforesaid reports, taken together, does not prima facie show that all these was done to humiliate intentionally, for the sole reason that the prosecutrix belonged to Scheduled Tribe and what abusive words has been stated, were not stated. Therefore, even though, it is found that prima facie case is made out under Section 294, 506, 509-B of the IPC on the basis of language, which has been used by the present appellant against the prosecutrix, there is a considerable force in the submission of learned counsel for the appellant that no prima facie case of commission of offence under Section 3(1)(r) & (s) of the Act of 1989 is made out against the appellant. Therefore, in such a situation the appellant would be entitled to protection of anticipatory bail, in view of the decision of the Supreme Court in the case of **Prathvi Raj Chouhan** (supra).

9. Accordingly, the application is allowed. It is directed that in the event of arrest of the appellant in connection with the aforesaid offence, he will be released on bail by the arresting officer on his furnishing a personal bond for a sum of Rs.25,000/- with one local surety for the like amount to the satisfaction of the arresting officer with following further conditions that:

- (I) the appellant shall make himself available for interrogation by a police officer as and when required;
- (II) 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/her from disclosing such facts to the Court or to any police officer;

Certified copy as per rules.

SD/-
(**Manindra Mohan Shrivastava**)
J U D G E