

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
CRA No. 61 of 2021

Poshan Shriwas S/o Late Narayan Shriwas, Aged About 28 Years,
 Resident of P.T.S. Rajnandgaon, Permanent Address- village- Beltikri,
 Police Station- Surgi, Tahsil and District- Rajnandgaon, Chhattisgarh.

---- **Appellant**

Versus

State of Chhattisgarh Through- The Station House Officer, Police Station
 -Adim Jati Kalyan Thana, Rajnandgaon, Chhattisgarh.

--- **Respondents**

For Applicants	: Mr. Gautam Khetrapal, Advocate.
For Respondent-State	: Mr. Anand Verma, Dy. GA.

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

01/04/2021

Heard.

1. This criminal appeal under Section 14-A (ii) of Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for short, 'Act of 1989'), has been preferred against the order dated 07.01.2021 passed by learned Special Judge (Atrocities Act) Rajnandgaon, (CG) where appellant's application under Section 438 of Cr.P.C has been dismissed.
2. Appellant is apprehending his arrest in connection with Crime No.3/2020 registered at Police Station -Adim Jati Kalyan Thana, Distt -Rajnandgaon, Chhattisgarh, for the offence punishable under Sections 376 (2) of Indian Penal Code and Section 3(2) (v-a) of the Act of 1989.
3. Case of the prosecution, in brief, is that appellant and prosecutrix, who were studying in Class -11 in the same school have developed friendship, which later on turned into love affair. Appellant on the pretext of marriage has established physical relationship with prosecutrix from the year 2013 till 17.11.2020, when he refused to marry her on the ground that his parents are not ready to accept her as she belongs to other caste. This made the prosecutrix to lodge written complaint before concerned police

station based upon which aforementioned offences was registered against the present appellant.

4. Learned counsel for the appellant submits that appellant and prosecutrix were having friendship since they were studying in class 11 and thereafter friendship converted into love affair. As per allegation they indulged in physical relationship since the year 2013 upto November, 2020, which shows that physical relationship has been made with consent of prosecutrix. He further submits that due to compelling circumstances, applicant could not marry her. There is no specific allegation against appellant that appellant has made physical relationship with prosecutrix only on the pretext that she belongs to a particular caste, hence, bar under Section 18 of the Act of 1989 will not attract. In support of his contention, learned counsel for the appellant relied upon the judgment passed by Hon'ble Supreme Court in case of **Prathvi Raj Chauhan vs. Union of India and Ors** reported in **(2020) 4 SCC 727** and orders passed by the Co-ordinate Bench of this Court on 11.12.2020 in CRA No.744/2020, 01.07.2020 in M.Cr.C(A)/506/2020, 04.09.2020 in M.Cr.C(A)/928/2020.
5. On the other hand, learned State Counsel opposes the submissions made by learned counsel for appellant and submits that as per written complaint and statement of prosecutrix recorded under Section 164 of Cr.P.C there is specific allegation against appellant that appellant had established physical relationship with prosecutrix on the pretext of marriage since the year 2013 upto 2020, thereafter appellant has taken a somersault and refused to marry her. Hence, appellant is not entitled for grant of anticipatory bail. It is further submitted that offence under Section 3(2) (v-a) of the Act of 1989 is also registered and as such application for

grant of anticipatory bail is not maintainable in view of bar under Section 18 of the Act of 1989.

6. Prosecutrix, who is present in person also opposes the grant of bail to appellant.
7. Heard learned counsel for the parties.
8. From the contents of written complaint and statement of prosecutrix it is apparent that prosecutrix being in love with appellant had developed physical relationship with him from the year 2013 which continued till November, 2020. Though under Section 18 of the Act of 1989 there is bar for entertaining an application for grant of anticipatory bail, but this bar is not absolute and the Court can consider an application filed under Section 438 of Cr.P.C, if appellant makes out a case.
9. Hon'ble Supreme Court in case of **Dr. Subhash Kashinath Mahajan vs. State of Maharashtra and Anr** reported in **(2018) 6 SCC 454 & Prathvi Raj Chauhan** (supra) has considered the bar imposed under Section 18 of the Act of 1989 for considering an application for anticipatory bail and has held that the bar is not absolute. Relevant portion of **Dr. Subhash Kashinath Mahajan** (supra) read thus :-

“50. We have no quarrel with the proposition laid down in the said judgment that persons committing offences under the Atrocities Act ought not to be granted anticipatory bail in the same manner in which the anticipatory bail is granted in other cases punishable with similar sentence. Still, the question remains whether in cases where there is no prima facie case under the Act, bar under Section 18 operates can be considered. We are unable to read the said judgment as laying down that exclusion is applicable to such situations. If a person is able to show that, prima facie, he has not committed any atrocity against a member of SC and ST and that the allegation was mala fide and prima facie false and that prima facie no case was made out, we do not see any justification for applying Section 18 in such cases. Consideration in the mind of this Court in Balothia (supra) is that the perpetrators of atrocities should not be granted anticipatory bail so that they may not terrorise the victims.

Consistent with this view, it can certainly be said that innocent persons against whom there was no prima facie case or patently false case cannot be subjected to the same treatment as the persons who are prima facie perpetrators of the crime.

51. In view of decisions in Vilas Pandurang Pawar (supra) and Shakuntla Devi (supra), learned ASG has rightly stated that there is no absolute bar to grant anticipatory bail if no prima facie case is made out inspite of validity of Section 18 of the Atrocities Act being upheld.

55. In the present context, wisdom of legislature in creating an offence cannot be questioned but individual justice is a judicial function depending on facts. As a policy, anticipatory bail may be excluded but exclusion cannot be intended to apply where a patently malafide version is put forward. Courts have inherent jurisdiction to do justice and this jurisdiction cannot be intended to be excluded. Thus, exclusion of Court's jurisdiction is not to be read as absolute.

57. Applying the above well known principle, we hold that the exclusion of Section 438 Cr.P.C. applies when a prima facie case of commission of offence under the Atrocities Act is made. On the other hand, if it can be shown that the allegations are prima facie motivated and false, such exclusion will not apply."

10. In case of **Prathvi Raj Chauha (supra)** Hon'ble Supreme Court held thus :-

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

11. The appellant and prosecutrix are major, there is allegation of physical relationship since last seven years. Considering the entire facts and circumstances of the case, nature of allegation, law laid down by the Hon'ble Supreme Court in cases of **Dr. Subhash Kashinath Mahajan & Prathvi Raj Chauhan (supra)** and other orders relied upon by learned counsel for the appellant, I am inclined to grant anticipatory bail to appellant.

12. Accordingly, appeal is allowed and it is directed that in the event of arrest of applicant in connection with the crime in question, he shall be released on bail by the officer arresting him on his 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. The appellant shall also abide by the following conditions :

- (i) that the appellant shall make himself for interrogation before the investigating officer as and when required;
- (ii) that 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;
- (iii) that the appellant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that the appellant shall appear before the trial Court on each and every date given to them by the said Court till disposal of the trial.

Sd/-

(Parth Prateem Sahu)
Judge

Jamal/-