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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.93 of 2021**

1. Satish Agrawal, S/o Shri Govind Agrawal, aged about 40 years, R/o Village Near Bus Stand, Pithora, Police Station and Tehsil Pithora, District Mahasamund, Chhattisgarh

2. Mantu @ Bantu @ Jyotish Agrawal, S/o Shri Murlidhar Agrawal, aged about 33 years, R/o Village Near Sahakari Bank, Pithora, Police Station and Tehsil Pithora, District Mahasamund, Chhattisgarh

---- Appellants**Versus**

State of Chhattisgarh, through Station House Officer, Pithora, District Mahasamund, Chhattisgarh

---- Respondent**Criminal Appeal No.137 of 2021**

Ramcharan Yadav, S/o Shri Melaram Yadav, aged about 38 years, R/o Village Baar (Nawapara), Police Station Raja Dewari, Tehsil Kasdol, District Baloda Bazar, Chhattisgarh

---- Appellant**Versus**

State of Chhattisgarh, through Station House Officer, Pithora, District Mahasamund, Chhattisgarh

---- Respondent**Criminal Appeal No.94 of 2021**

1. Bablu Sharma @ Nitesh Sharma, S/o Shri Satish Sharma, aged about 33 years, R/o Village Near Govt. Hospital, Pithora, Police Station and Tehsil Pithora, District Mahasamund, Chhattisgarh

2. Vinod Sinha, S/o Shri Parasram Sinha, aged about 40 years, R/o Village Sarkada, Pithora, Police Station and Tehsil Pithora, District Mahasamund, Chhattisgarh

---- Appellants**Versus**

State of Chhattisgarh, through Station House Officer, Pithora, District Mahasamund, Chhattisgarh.

---- Respondent

 For Appellants : Shri Surfaraj Khan, Advocate
 For Respondent/State : Shri Anand Verma, Dy. Govt. Advocate
 For Complainant : Shri Rahil Arun Kochar, Advocate

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

25.03.2021

1. Since all the three appeals are arising out of same crime number, i.e. Crime No.145 of 2019 (wrongly printed as Crime No.145 of 2020 in the impugned order), they are being considered and decided by this common order.
2. The appellants have preferred instant appeals challenging the order dated 06.01.2021, 23.01.2021 and 06.01.2021 respectively passed by the Special Judge, Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Mahasamund whereby the applications preferred by the appellants for grant of anticipatory bail under Section 438 of the Cr.P.C. have been rejected.
3. The appellants have preferred these appeals for grant of anticipatory bail, as they are apprehending their arrest in connection with Crime No.145 of 2019 (wrongly printed as Crime No.145 of 2020 in the impugned order), registered at Police Station Pithora, District Mahasamund, Chhattisgarh, for offence punishable under Sections 147, 294, 323, 506 of the Indian Penal Code (hereinafter referred to as 'IPC') and Section 3(1)(r) of the Act of 1989.

4. The applications filed under Section 438 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') before the Court below were dismissed by the impugned orders.
5. Case of the prosecution in brief, is that, on 29.08.2019, at about 3.15 PM, a written complainant was lodged by Nirmal Singh Thakur mentioning therein that on 29.08.2019, at about 9.00 AM, Ramcharan Yadav (appellant in Criminal Appeal No.137 of 2019) started demolishing boundary wall by JCB machine, which was objected by the complainant and his son. On that, Ramcharan Yadav while abusing them in filthy language, has abused the complainant by caste. At the spot, there are 25-30 persons including Satish Agrawal, Mantu @ Bantu @ Jyotish Agrawal, Bablu Sharma @ Nitesh Sharma, Vinod Sinha, Gopal Pandey and others with Ramcharan Yadav. They have assaulted the complainant and his son by means of club, hockey-stick and stones. Upon which, complainant and his son suffered grievous injuries. When they saw complainant coming to Police Station, Ramcharan Yadav and all of them again abused the complainant by caste and stated that they will assault them in Police Station. Based on written complaint, First Information Report was registered initially under Sections 147, 294, 323 and 506 of the IPC on

30.08.2019 at 19.15 hours, thereafter, offence under Section 3(1)(r) of the Act of 1989 was also registered / added.

6. Shri Surfaraj Khan, learned counsel for the appellants in all these appeals submits that it is the complainant and his son who assaulted Ramcharan Yadav, due to which, he also lodged the First Information Report against Nirmal Singh Thakur, Uttam Singh Thakur, Umesh Thakur, Pradeep Thakur and mother of Pradeep Thakur on 30.08.2019 for offence defined under Section 147, 294, 323 and 506 of the IPC. He further submits that learned Court below erred in dismissing the bail applications of all the appellants considering the bar under Section 18 of the Act of 1989. He submits that absolutely false allegations have been levelled against the appellants with malafide. He points out that the incident is on dispute with boundary wall of house, hence, the provision of Section 1(1)(r) of the Act of 1989 will not be attracted. In support of his contention, he placed his reliance in order passed by this Court in Criminal Appeal No.845 of 2020 (**Rajnish Mishra v. State of Chhattisgarh**) in which learned Judge has relied upon the case law of **Hitesh Verma v. State of Uttarakhand and Another** reported in **AIR 2020 SC 5584**. It is contended that appellants are entitled for bail.
7. Per contra, Shri Anand Verma, learned Deputy Government Advocate while opposing the submissions made by learned

counsel for the appellants, submits that learned Court below has rightly dismissed the applications under Section 438 of the Cr.P.C. to be barred under Section 18 of the Act of 1989. He pointed out that appellants absconded for a period of one year and have filed applications for grant of anticipatory bail thereafter. He further pointed out that Police has filed the charge-sheet in the crime declaring the present appellants to be absconding. Appellants have been declared to be absconded and charge-sheet was filed in their absence, hence, they are not entitled for benefit of grant of anticipatory bail. He places his reliance in the matter of **State of Madhya Pradesh v. Pradeep Sharma** reported in **(2014) 2 SCC 171** to buttress his submission.

8. Shri Rahil Arun Kochar, learned counsel for the complainant submits that in view of bar under Section 18 of the Act of 1989, appellants are not entitled for grant of anticipatory bail.
9. I have heard learned counsel for the respective parties.
10. From bare perusal of contents of the written complaint made by Nirmal Singh Thakur, it is apparent that allegation of abusing by caste has been specifically made against Ramcharan Yadav. In the complaint, it is mentioned that along with Ramcharan Yadav, there were about 25-30 persons including Satish Agrawal, Mantu @ Bantu @ Jyotish Agrawal, Bablu Sharma @ Nitesh Sharma, Vinod Sinha,

Gopal Pandey and all of them assaulted Nirmal Singh Thakur and Uttam Singh Thakur. Further allegation is that while they were going to Police Station, Ramcharan Yadav and all others while abusing, have stated that “sala adivasi thana ja raha hai”. Going through the complaint, specific allegation of abusing by caste is against Ramcharan Yadav (appellant in Criminal Appeal No.137 of 2021) only.

11. Perusal of the complaint would show that complainant has sold the land where boundary wall was constructed to one Akash Agrawal and said Akash Agrawal after execution of sale deed has not given balance sale consideration of Rs.3 Lacs. The case law relied upon by the learned counsel for the appellants is on different facts.
12. In case of **Rajnish Mishra** (supra), the ground raised before the Court was that offence alleged under Section 3(1)(r) of the Act of 1989 has been committed within four walls of the building and not a public place. In the case at hand, offence as alleged has committed outside the house which is within the public view, hence, appellants could not get any benefit of the order passed in case of **Rajnish Mishra** (supra). Further, submission of learned counsel for the appellants that merely using the word 'adivasi' will not in itself be sufficient to attract the provisions of Section 3(1)(r) of the Act of 1989. He

submits that there are different castes in the tribe unless and until that specific caste is used, offence cannot be made out.

13. Hon'ble Supreme Court in case of **Manju Devi v. Onkarjit Singh Ahluwalia alias Omkarjeet** reported in **(2017) 13 SCC 439** has considered this issue and held that word "Harijan", "Dhobi", etc. is often used by people belonging to so-called upper castes as a word of insult, abuse and derision. Hence, said submission of learned counsel for the appellants is also not sustainable.
14. Hon'ble Supreme Court in case of **Dr. Subhash Kashinath Mahajan v. State of Maharashtra and Another** reported in **(2018) 6 SCC 454** has considered that bar under Section 18 of the Act of 1989 to be not absolute and held that if a person is able to show that prima facie he has not committed any atrocity, allegation is motivated, malafide, there is no justification for applying Section 18 of the Act of 1989 in such cases and held 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 *State of MP v. Ram Krishna Balothia*, (1995) 3 SCC 221, 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 v. State of Maharashtra*, (2012) 8 SCC 795 and *Shakuntla Devi v. Baljinder Singh*, (2014) 15 SCC 521, learned ASG has rightly stated that there is no absolute bar to grant anticipatory bail if no prima

facie case is made out in spite of validity of Section 18 of the Atrocities Act being upheld.

53. It is well settled that a statute is to be read in the context of the background and its object. Instead of literal interpretation, the court may, in the present context, prefer purposive interpretation to achieve the object of law. Doctrine of proportionality is well known for advancing the object of Articles 14 and 21. A procedural penal provision affecting liberty of citizen must be read consistent with the concept of fairness and reasonableness.

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."

15. In the case at hand, complainant Nirmal Singh Thakur is a retired Reserved Inspector of Police Department. He has submitted written complaint before the Police specifically

named Ramcharan Yadav of abusing by caste. The names of other appellants have been used as they have all assaulted and further name of Ramcharan Yadav is used for labeling allegation that while complainant was going to Police Station, he abused him by caste and not specifically named other persons though he was knowing, but has only stated all others.

16. Taking into consideration entire facts and circumstances of the case, nature of allegations as appearing from the written complaint and First Information Report where complainant has not specifically named the appellants except Ramcharan Yadav for abusing him by his caste and taking support of ruling of **Dr. Subhash Kashinath Mahajan** (supra), I am inclined to release Satish Agrawal, Mantu @ Bantu @ Jyotish Agrawal, Bablu Sharma @ Nitesh Sharma and Vinod Sinha on anticipatory bail.
17. Accordingly, Criminal Appeal No.137 of 2021 filed by Ramcharan Yadav is liable to be and is hereby dismissed. Criminal Appeal No.93 of 2021 and Criminal Appeal No.94 of 2021 are allowed and the impugned orders are set-aside. The appellants, namely, Satish Agrawal, Mantu @ Bantu @ Jyotish Agrawal, Bablu Sharma @ Nitesh Sharma and Vinod Sinha are directed to be released on anticipatory bail on each of them furnishing a personal bond for a sum of Rs.25,000/-

with one surety for the like amount to the satisfaction of the Arresting Officer with the following conditions:

(i) they shall make themselves available for interrogation by a police officer as and when required;

(ii) they 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; and

(iii) they shall not influence the witnesses during pendency of the trial.

Certified copy as per Rules.

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh