

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 131 of 2021**

1. Lakshan Yadav S/o Ramesar , Aged About 33 Years
2. Gokul Prasad Yadav S/o Motilal Yadav Aged About 26 Years
3. Birbal Yadav S/o Motilal Yadav Aged About 21 Years

All are by Caste Yadav, and R/o Gram Dighora, P. S. Mulmula, District Janjgir
Champa Chhattisgarh

---- Appellants**Versus**

- State Of Chhattisgarh Through District Magistrate Janjgir Champa, District
Janjgir Champa Chhattisgarh

---- Respondent

For Appellants	: Shri Sourabh Sharma, Advocate
For Respondent/State	: Shri Rakesh Sahu, Dy GA
For Complainant	: Ms Madhunisha Singh, Advocate

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

01.04.2021

1. This is Appeal under Section 14A (2) of the SCST (Prevention of Atrocities) Act, 1989 (for short, 'Act of 1989') for grant of anticipatory bail to the appellants as they apprehend their arrest in connection with Crime No.06 of 2020 registered at Police Station Ajak, Janjgir, District- Janjgir-Champa CG for commission of offences punishable under Sections 294, 323, 341, 506 r/w 34 of IPC and 3(2)(v)(a) of the Act of 1989.

2. Case of the prosecution, in brief, is that, the complainant while returning from the house of his friend after taking lunch, reached near Mutari Nala Bridge, present appellants, who were sitting there, obstructed him, abused him in filthy language, abused him by Caste and also assaulted him. This incident was reported to the concerned Police Station, based upon which, aforementioned offences were registered against the applicants.

3. Anticipatory bail application filed before the Court below was rejected by impugned order.

4. Shri Saurabh Sharma, learned counsel for the appellants submits that when the appellants were sitting on the Bridge Nala, complainant abused them and stated that he defeated them twice in Panchayat Elections and also started quarrelling with them. Lakshan Yadav, one of the appellants lodged a complaint before Police Station Mulmula on 01.02.2020 at about 19.00 hours. The Police Drawn proceedings under Section 155 of the CrPC. He submits that written report was lodged against them on the next day ie 02.02.2020, only after getting the knowledge that present appellants lodged complaint against him. He further pointed out that as per the allegation levelled in the complaint itself, it reveals that the dispute was on account of Panchayat Election. He further argued that the dispute between the parties did not take place only on the ground that complainant belong to a particular Caste. He also argued that allegation levelled against the appellants in his written report is absolutely false, in fact, it is the complainant, who started quarrel with appellants. He submits that appellants have not committed any offence as alleged against them.

5. The application for grant of anticipatory bail was rejected by learned court below, considering bar under Section 18 of Act of 1989. Relying upon the order passed in CRA-806 of 2020 and judgment passed by Hon'ble Supreme Court in case of **Khuman Singh Vs State of MP**, 2019 SCC On-line SC 1104 (equivalent citation AIR 2019 SC 2010) would argue that bar under Section 18 of the Act of 1989 will attract only

when the allegation of commission of offence under Indian Penal Code is only because the complainant belong to the Schedule Tribe or Schedule Caste. He further submits that the bar under Section 18 of Act of 1989 as such in the facts of the case, would not be attracted as the false case is projected by the complainant.

6. On the other hand, Shri Rakesh Sahu, learned Dy GA for the State while opposing the submissions of learned counsel for the appellants, submits that, in the written complaint filed by the complainant, there is specific allegation against the appellants that they abused the complainant in filthy language, by his caste, and also assaulted him. He further pointed out that in the complaint, it is mentioned that two persons have been shown to be witness to the incident. He submits that in view of provision under Section 18 of the Act of 1989, there is bar for entertaining the application for bail under Section 438 of the CrPC.

7. Ms Madhunisha Singh, learned counsel for the complainant submits that there is specific allegation of commission of offence by the appellants under Section 3(2)(v)(a) of the Act of 1989, and witnessed by two other persons. Hence, application itself is not maintainable in view of bar under Section 18 of Act of 1989.

8. I have heard learned counsel for the parties.

9. Undisputedly, alleged dispute between the parties took place on 01.02.2020 at about 4.30 pm. The complaint regarding the dispute was made by the applicant Lakshan Yadav against the complainant within few hours on the same day and Police drawn proceeding under Section

155 of CrPC (Annexure A2). Complainant lodged a written complaint only on the next day ie 02.02.2020.

10. There is no dispute with regard to provision under Section 18 of the Act of 1989, wherein there is specific bar for entertaining application under Section 438 of the CrPC.

11. Hon'ble Supreme Court in case of **Dr Subhash Kashinath Mahajan Vs State of Maharashtra and another**, (2018) 6 SCC 454 has considered that bar under Section 18 of the Act of 1989 to be not absolute and held that if the person is able to show that prima facie he has not committed any atrocity, allegation is motivated, *mala fide*, 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 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.

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.

12. The aforementioned judgment was put to challenge in review in case of **Union of India Vs State of Maharashtra**, (2020) 4 SCC 461. Hon'ble Supreme Court considering the submissions, recalled the part of judgment, wherein direction was given for conducting preliminary enquiry before registration of FIR for offence under the Act of 1989.

13. Taking into consideration the entirety of facts of the case, nature of allegations levelled against the applicants and further considering that the appellants have lodged report before the concerned Police Station immediately after the incident on the same day, whereas, complainant's

written complaint has been lodged on the next day ie on 02.02.2020, *prima facie* it appears applicants have not committed 'Atrocity'. Without commenting anything on merits of case, I am inclined to grant anticipatory bail to the appellants.

14. Accordingly, the application is allowed and it is directed that in the event of arrest of appellants in connection with the crime in question, they shall be released on anticipatory bail by the Officer arresting them on their executing a personal bond in the sum of Rs.25,000/- (Rupees twenty-five thousand) each, with one surety in the like sum to the satisfaction of the concerned Investigating Officer. The appellants shall also abide by the following conditions:

- (a) That the appellants shall make himself available for interrogation before the Investigating Officer as and when required;
- (b) That the appellants 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/them from disclosing such facts to the Court or to any Police Officer;
- (c) That the appellants shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (d) That the appellants shall appear before the trial Court on each and every date given to them by the said Court till disposal of the trial.

Certified copy as per rules.

Sd/-
(Parth Prateem Sahu)
JUDGE