

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.136 of 2021**

- Rath Bai Yadav W/o Bodh Prakash Yadav Aged About 50 Years Cast Yadav, R/o Village- Basin, Police Station- Nagraha, District- Janjgir-Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

---- Petitioner**Versus**

- State Of Chhattisgarh Through Police Station Anusuchit Jati Kalyan, Police Station Janjgir, District- Janjgir-Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

---- Respondent

For Appellant/s: Shri Vivek Mishra with Ms.Ishwari Ghritlahre, Advocates
 For Respondent/State: Shri Pawan Kesharwani, GA

Single Bench: Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board**12/03/2021

Heard.

1. The appellant is apprehending her arrest in connection with Crime No.04/2020 registered at Police Station AJAK, Janjgir for the offence punishable under Section 294 of the IPC and Section 3(2)(v-a) of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (In short "the Act of 1989"). The appellant had applied for grant of anticipatory bail before the Court below, but the Court below rejected bail application of the appellant taking into consideration the bar created under Section 18 of the Act of 1989 and opining that as the allegations against the appellant is of commission of offences not only under IPC, but also under Section 3(2)(v-a) of the Act of 1989, the bail application is not maintainable. Aggrieved by this rejection order, the appellant has filed this appeal.

2. Prosecution case is that a report was lodged on 04-11-2020 by the complainant stating that in the night when he came out of the house and found

a truck standing nearby his house, the present appellant was there and she started hurling abuses and also used caste name. Thereafter, she was taken away in the vehicle. The appellant filed an application for grant of anticipatory bail before the Court below by stating that she has been falsely implicated and it is also stated that on 01-10-2020, another incident had taken place, in which, the appellant was assaulted, abused as also an attempt was made to outrage the modesty, in connection with, she had lodged FIR on 08-10-2020 only as a counterblast. The learned Court below taking into consideration one of the offences alleged is under the provisions of the Act of 1989, in view of the provisions under Section 18 of the Act of 1989, held that the anticipatory bail application is not maintainable, giving rise to this appeal.

3. Learned counsel for the appellant would argue that the learned Court below has not decided the bail application in accordance with law, because the Court below during the course of hearing failed to appreciate that the present was a case of false implication and the report was lodged as late as on 04-11-2020 in respect of the incident held on 01-10-2020, after the report was lodged by the appellant on 08-10-2020. Prosecution story is highly improbable because, there is nothing as to why the appellant would hurl abuses, has not been stated in the FIR. Last but not the least, submission is that if entire allegations as contained in the FIR is taken as it is, do not make out prima facie case against the appellant. There is nothing in the complaint that hurling of abuses was done for the reason that the victim belonging to the Scheduled Tribe Category, therefore, bar under Section 18 of the Act of 1989 would not come in the way and the appellant is entitled to benefit of anticipatory bail.

5. On the other hand, learned counsel for the State as well as learned counsel for the Objector would submit that the contents of the complaint lodged on 04-11-2020, allege use of caste words, coupled with the abusive language which clearly makes out a prima facie case of hurling of abuses to the

complainant for the reason that he belonged to the Scheduled Tribe Category and that would bar application for grant of anticipatory bail in view of the provisions contained under Section 18 of the Act of 1989.

6. Having heard the submissions of learned counsel for the parties and perusing the records, in the opinion of this Court, despite bar under Section 18 of the Act of 1989, case for grant of anticipatory bail is made out in terms of what has been stated by the Supreme Court in the cases of ***Dinesh alias Buddha Vs. State of Rajasthan (2006) 3 SCC 771***, ***Khuman Singh Vs. State of Madhya Pradesh (AIR 2019 SC 4030)*** and ***Prathvi Raj Chauhan vs. Union of India & Ors., (2020) 4 SCC 727***.

7. Firstly, the incident, in respect of which, the report has been lodged by the complainant on 04-11-2020, is said to have been happened on 01-10-2020, but the report was lodged after more than one month. In the meantime, the present appellant herself lodged a report on 08-10-2020 against number of persons including the present complainant that he had come in a drunken stage, abused and outraged the modesty of the appellant, due to which, she lodged report in the police station.

8. On prima facie consideration, the contents of FIR, appears to be quite improbable, because there is no background as to why the appellant suddenly started abusing the complainant. The allegation in the complaint shows that in the night, when the complainant came out of his house, he saw a vehicle standing nearby his house and when he reached near the vehicle, the appellant hurled abuses without giving any background of any quarrel or dispute certainly appears to be a improbable story. Last but not the least, the entire allegations contained in the FIR did not make out a prima facie case against the appellant, because hurling of abuses to the complainant was not for the reason that he belongs to Scheduled Tribe Category. The complaint does not contain any such statement. Therefore, applying the principles of the Supreme Court in the case

of **Prathvi Raj Chauhan** (supra), present is a case of exceptional nature and, therefore, the appellant is entitled to benefit of anticipatory bail notwithstanding the bar created under Section 18 of the Act. The learned Court below mechanically rejected the bail application without examining the material on record in the light of the decisions of the Supreme Court in the **Dinesh, Khuman Singh** and **Prathvi Raj Chauhan** (supra) and relevant considerations, particularly delay in lodging of FIR and there is a report already lodged by the appellant on 08-10-2020 against the complainant alleging abuses, assault and act of outraging modesty.

9. In view of the above, impugned order passed by the Court below cannot be sustained and, therefore, set aside. The aforesaid appeal (Cr.A.No.136 of 2021) is accordingly allowed and it is directed that in the event of arrest, the appellant 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, with following further conditions that:-

- (i) the appellant shall make herself available for interrogation by the 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 her from disclosing such facts to the Court or to any police officer;

Certified copy as per rules.

SD/-
(**Manindra Mohan Shrivastava**)
Judge