

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 167 of 2021**

- Pankaj Kumar Joshi, S/o Divya Darshan Joshi, Aged About 31 Years, R/o. Jamuna Mines Colony, D/83, Police Station Bhalumada, Tahsil And District Anuppur (M.P.)
---- **Appellant**

Versus

- State Of Chhattisgarh, Through - Station House Officer, Police Station Rajendra Nagar, Raipur, District Raipur Chhattisgarh
---- **Respondent**

For Applicant	: Shri Nasimuddin Ansari, Advocate
For Respondent/State	: Shri Anand Verma, Dy GA

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board**25.03.2021**

1. This is an application under Section 438 of CrPC for grant of anticipatory bail to the applicant as he apprehends his arrest in connection with Crime No.303 of 2019 registered at Police Station Rajendra Nagar, Raipur, District Raipur for commission of offences punishable under Sections 376, 506, 345 of IPC and Section 3(2) (v)(a) of SC/ST (Prevention of Atrocities) Act, 1989. (hereinafter referred to as Act of 1989).
2. Case of the prosecution is that, prosecutrix filed a written complaint before the Superintendent of Police on 01.05.2019 mentioning therein that one Prakash Joshi, younger brother of present applicant was having relationship with her for the past two years. On 22.04.2019, Prakash Joshi came to the rented accommodation at Mahavir Nagar, New Rajendra Nagar, Raipur. In absence of prosecutrix, he took away her Gold and Silver ornaments. When she came back to her home, she found that the ornaments were not in the place where she kept. Then, she made a telephonic call to Prakash Joshi and inquired about the ornaments, upon which he abused her in filthy language and stated that he does not want to continue their relationship and cut off the

phone. Prosecutrix, thereafter, on 25.04.2019, went to the house at D-83, Jamina Minor Colony, Tahsil and District Anuppur, MP from where, Prakash Joshi, his mother and present applicant took her to Anuppur in a Car and have threatened her life and said that she would not call them on phone. She went to Police Station Bhalumada, where her husband Prakash Joshi also came behind her. The Constable on duty present there asked her to lodge the report at the place where they were residing ie at Raipur. It is also mentioned that due to physical relationship with Prakash Joshi, prosecutrix conceived, upon which he gave her some tablet, due to which, her pregnancy was aborted. Based on the written complaint, the statement of prosecutrix was recorded and FIR was registered against the present applicant, Smt Asha Devi -mother of applicant and Prakash Joshi, for the offences as mentioned above.

3. Shri Naseemuddin Ansari, learned counsel for the applicant submits that only allegation levelled against the present applicant is that he along with other took the prosecutrix in a Car to Anuppur and there, he left her. He submits that all the allegations mentioned in the written complaint are against Prakash Joshi, with whom prosecutrix was allegedly having relationship. Present applicant and his mother have been falsely implicated in the offence, only to pressurize Prakash Joshi. He submits that present applicant has been falsely implicated in the aforementioned crime with *mala fide* intention. In these circumstances, he prays that the applicant be extended benefit under Section 438 of CrPC.

4. On the other hand, Shri Anand Verma, learned State counsel while opposing the submissions of learned counsel for the applicant, submits

that, there is bar under Section 18 of the Act of 1989 for entertaining application for anticipatory bail under Act of 1989. Learned Court below, considering the bar under Section 18 under the Act of 1989, has dismissed the application. He further pointed out that against the present applicant, allegation is that he along with Prakash Joshi and his mother took prosecutrix to Anuppur from their residence and they gave her life threat for not calling them anymore on phone or to keep any relationship with them. Hence, he is not entitled for benefit under Section 438 of CrPC.

5. I have heard learned counsel for the parties and also perused the written complaint filed by the prosecutrix.

6. So far as the objection raised by learned State counsel that appeal is not maintainable in view of bar under Section 18 of the Act of 1989, Hon'ble Supreme Court has held that bar under Section 18 is not absolute. High Court can consider the case where person is able to show that the allegation was mala fide, prima facie false and prima facie case was not made out. Recently, this issue has been considered by Hon'ble Supreme Court in the matter of **Dr Subhash Kashinath Mahajan Vs State of Maharashtra and another**, (2018) 6 SCC 454 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.

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 mala fide 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. ”

7. Upon considering the written complaint filed by the prosecutrix, it is apparent that prosecutrix and Prakash Joshi were having relationship, Prakash Joshi took the ornaments, and after two years of relationship, he stated that he does not want to continue, due to which, she also became pregnant. All the allegations are against Prakash Joshi but for the allegation that applicant with his mother and Prakash Joshi, took her in car and dropped her at Anuppur and threatened her not to give mobile call to them.

8. Taking into consideration the nature of allegations leveled against the present applicant and judgment passed in case of **Dr Subhash**

Kashinath (supra), I am of the view that Section 18 of the Act of 1989 will not apply to the facts of present case.

9. Considering the totality of facts and circumstances of the case, nature of allegations, without commenting anything on merits of case, I am inclined to grant anticipatory bail to the applicant.

10. Accordingly, the application 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 anticipatory bail by the Officer arresting him on his executing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Investigating Officer. The applicant shall also abide by the following conditions:

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

Certified copy as per rules.

Sd/-
(Parth Prateem Sahu)
JUDGE