

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 228 of 2021**

- Khilendra, aged about 30 years, S/o late Ghanshyam Sahu, resident of village & Post Sambalpur, Tahsil Bhanupratappur, North Bastar Kanker (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh, Through : Police Station Bhanupratappur, District Kanker (C.G.)

---- Respondent

For Appellant	:	Mr. Raza Ali, Advocate
For Respondent	:	Mr. Sameer Uraon, G.A.

Hon'ble Smt Justice Rajani Dubey**Order on Board****08/04/2021**

1. The appellant has preferred this criminal appeal under Section 14(A)(2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 for grant of anticipatory bail, as he apprehends his arrest in connection with Crime No.250/2020, registered at Police Station - Bhanupratappur, District Kanker (C.G.) for the offence punishable under Sections 376(2)(D) IPC, Section 4, 6 of POCSO Act and Section 3(2)(V) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity), Act, 1989 (for short 'the Act 1989').
2. The prosecution story, in brief, is that the complainant and the appellant have been in physical relationship since 2013 on the pretext of marriage. When the complainant came to know about the marriage of applicant, she lodged the FIR against the applicant.
3. Learned counsel for the appellant submits that the

appellant is innocent and has been falsely implicated in the case. He further submits that the prosecutrix was in relationship with the applicant from 2013 and in the year 2020 FIR has been lodged, which itself indicate that the applicant has been falsely implicated in the crime in question. He also submits that the prosecutrix was 17 years old in the year 2013. The ingredient of Act 1989 is not attracted in the case as there is no allegation against the applicant that he was aware about the caste of the prosecutrix and the offence has been committed with that intent.

4. On the other hand, learned counsel for the State opposed the bail application.
5. Notice issue to complainant is reported to be served.
6. I have heard learned counsel for the parties and perused the record
7. The Hon'ble Supreme Court, in the matter of **Maheshwar Tigga Vs. State of Jharkhand (Criminal Appeal No.635/2020 arising out of S.L.P. (Cri) No.393/2020).**, held that the prosecutrix willingly consented to having sexual intercourse with the appellant with whom she was deeply in love, not because he promised to marry her, but because she also desired it. In these circumstances, it would be very difficult to impute to the appellant knowledge that the prosecutrix had consented in consequence of a misconception of fact arising from his promise. In any event, it was not possible for the appellant to know what was in the mind of the prosecutrix when she consented, because there were more reasons than one for her to consent.
8. Further, the Hon'ble Supreme Court in the matter of **Hitesh Verma Vs. State of Uttarakhand & Anr.**

(Criminal Appeal No.707/2020 arising out of SLP (Criminal) No.3585/2020), in para 18, held that offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out.

9. After hearing counsel for the parties and considering the facts and circumstances of the case, and in view of the judgments of Hon'ble Supreme Court in the matter of **Maheshwar** (supra) and **Hitesh** (supra), this Court is of the considered opinion that it is a fit case to grant anticipatory bail to the appellant. Accordingly, the appeal is allowed. It is directed that in the event of arrest of the appellant in connection with aforesaid crime number, he shall be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- with one surety for the like sum to the satisfaction of the concerned arresting/investigating officer or the court concerned, as the case may be, with the following terms and conditions:
 - (i) that the appellant shall make himself available for interrogation/medical examination before the concerned 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 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 him by the said Court till disposal of the trial.

Sd/-
(Rajani Dubey)
Judge

pkd