

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**CRA No. 215 of 2021**

- Dinesh Jain S/o Late Kailash Chandra Jain, aged about 43 years, R/o Kunkuri, Thasil and P.S. Kunkuri, District Jaspur, Chhattisgarh

-----Appellant**VERSUS**

- State of Chhattisgarh through: Police Station: Kunkuri, District- Jashpur, Chhattisgarh

-----Respondent

For Appellant	: Mr. Akath Kumar Yadav, Advocate
For Respondent- State	: Mr. B.P. Banjare, Dy. Govt. Adv.
For Victim	: Mr. Vikas A. Shrivastava, Advocate

(through Video Conferencing)**Hon'ble Shri Parth Prateem Sahu, Judge**
ORDER**08/07/2021**

1. This appeal arises out of rejection of an application filed under Section 438 of CrPC in connection with crime bearing no. 65/2020, registered at Police Station- Kunkuri, District Jashpur, Chhattisgarh, for offences defined under Sections 376(D), 342 of IPC and Section 3(2-5), 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "Act of 1989").
2. Appellant apprehending his arrest in crime no. 65/2020, had filed an application under Section 438 of CrPC before the Additional Sessions Judge and Special Judge, SC/ST (Prevention of Atrocities) Act, Jashpurnagar, District Jashpur, Chhattisgarh, which was dismissed by impugned order dated 02.02.2021.
3. Case of the prosecution is, that on 17.08.2020 at about 02:00 pm, present applicant called the prosecutrix on mobile phone to which she did not

respond, thereafter, present applicant came to her, asked to accompany him and due to fear of infamy she accompanied him. Appellant took her to his house at village Tangarpani, where co-accused Deepak Heda was present prior to them. Present applicant and prosecutrix went inside the house and Deepak Heda closed the door and remained outside the house. Present applicant committed rape upon prosecutrix. At that time, some villagers came there and shouted, upon which, present applicant opened the door. Villagers forcefully uncovered the face of prosecutrix which she was covered with her scarf (*dupatta*) to whom the prosecutrix intimated the incident. Thereafter, report has been lodged to the concerned police station, based upon which, aforementioned crime was registered.

4. Mr. A.K. Yadav, learned counsel for the appellant would argue that the prosecutrix in the F.I.R. has made absolutely false and baseless allegation against them. No such incident has taken place. He further submits that the F.I.R. has been lodged under the pressure of villagers. He further submits that the prosecutrix herself stated that while returning from the shop of the present appellant, after taking money, three persons by name Pankaj Minj, Hemant Minj, and Akshat Minj, under the influence of liquor, were flirting with her. She called for help, upon which, Deepak Heda and present appellant intervened. After which, prosecutrix again lodged the report against the three person bearing crime no. 66/2020 at police station Kunkuri and those three persons were arrested. He referred to Annexure A-3 in this regard. He further submits that the charge-sheet in the present case has been filed showing the present applicant absconding. In the Trial started against Deepak Heda, prosecutrix was examined on 22.01.2021 as PW-1. She denied the entire incident in her evidence. He submits that in view of the evidence of prosecutrix recorded before the trial Court where she denied the entire incident itself would show that the allegation levelled against the appellant and co-accused in the F.I.R. are absolutely false and

baseless.

5. Mr. B.P. Banjare, learned Deputy Government Advocate for the State however opposes the bail application, read over the contents of F.I.R. and submits that as there are specific allegation against the appellant under the aforementioned sections which also includes the offence under the Act of 1989, hence, the anticipatory Bail application itself would not maintainable in view of bar under the provisions of Section 18 of the Act of 1989.
6. Mr. Vikas A. Shrivastava, learned counsel for victim submits that he is not having any objection if appellant is enlarged on bail. He does not refute the submission made by learned counsel for the appellant with regard to evidence of prosecutrix as well as the contents of evidence of prosecutrix recorded before the Trial Court vide Ext. A-2.
7. I have heard learned counsel for the respective parties.
8. True it is that when the offence defined under the Act of 1989 is committed by any person then in ordinary course, anticipatory bail application is barred under the provisions of Section 18 of the Act of 1989, but the Court can consider the case only in exceptional circumstances where the appellant/ applicant satisfies the Court that the case lodged against the appellant/ applicant is absolutely false and baseless. Hon'ble Supreme Court in case of **Dr. Subhash Kashinath Mahajan v. State of Maharashtra and another** reported in **(2018) 6 SCC 454** and **Prathvi Raj Chauhan v. Union of India and others** reported in **(2020) 4 SCC 727** has considered as to under which circumstances the anticipatory bail can be considered, when the allegation of the offence defined under the provisions of Act of 1989 are also registered. Hon'ble Supreme Court in the case of **Dr. Subhash Kashinath Mahajan (supra)** has 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.

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.

57. Applying the above well known principle, we hold that the exclusion of Section 438 Cr.P.C. applies when a prima facie case of commission of offence under the Atrocities Act is made. On the other hand, if it can be shown that the allegations are prima facie motivated and false, such exclusion will not apply."

9. In case of **Prathvi Singh Chauhan (supra)**, Hon'ble Supreme Court has held thus:

“32. As far as the provision of Section 18-A and anticipatory bail is concerned, the judgment of Mishra, J. has stated that in cases where no prima facie materials exist warranting arrest in a complaint, the court has the inherent power to direct a pre-arrest bail.”

10. In view of the above, taking into consideration the nature of allegation, particularly, the statement of prosecutrix recorded before the trial Court in ST No.27/2020 in a trial against co-accused where she denied the entire incident; further learned counsel for the victim has not controverted the submissions made by learned counsel for the appellant and case of **Prathvi Singh (supra)**, I am of the view that in the facts and circumstances, anticipatory bail application can be considered.
11. Accordingly, appeal is allowed. It is directed that in the event of arrest of applicant in connection with the crime in question (65/2020), he shall be released on anticipatory bail by the Officer arresting him on his furnishing a personal bond in the sum of Rs. 25,000/- with one surety in the like sum to the satisfaction of the Arresting Officer. Applicant shall also abide by the following conditions:
 - (i) that the applicant shall make himself available for interrogation before the Investigation Officer as and when required;
 - (ii) 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;
 - (iii) that the applicant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
 - (iv) 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.

Sd/-
(Parth Prateem Sahu)
 Judge