

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**CRA No. 568 of 2021**

- Sanjay Agrawal S/o Shri Mahangi Lal Agrawal (M.L. Agrawal) aged about 53 years, Occupation Business (Director Maa Vaishnav Asso. Pvt. Ltd.), R/o School Para Baikunthpur, Tahsil Baikunthpur, District Koriya Chhattisgarh

-----Appellant**VERSUS**

- State of Chhattisgarh through: Station House Officer, Police Station: AJAK thana, Baikunthpur, District- Koriya, Chhattisgarh

-----Respondent**WITH****CRA No. 328 of 2021**

- Seema Agrawal W/o Shri Sanjay Agrawal, aged about 45 years, R/o School Para Baikunthpur, Tahsil Baikunthpur, District Koriya Chhattisgarh

-----Appellant**VERSUS**

- State of Chhattisgarh through: Station House Officer, Police Station: AJAK thana, Baikunthpur, District- Koriya, Chhattisgarh

-----Respondent

For Appellants	: Mr. R.K. Gupta, Advocate
For Respondent- State	: Mr. Vimlesh Bajpai, Govt. Adv.
For objector	: Mr. Pragalbha Sharma, Advocate

(through Video Conferencing)**Hon'ble Shri Parth Prateem Sahu, Judge**
ORDER**05/07/2021**

1. Both the appeals are arising out of the same crime bearing no. 326/2020, registered at Police Station- AJAK, Baikunthpur, District Koriya, Chhattisgarh, for offences defined under Sections 294, 506, 420, 120(B), 34 of IPC and Section 3(2)(va) and 3(1)(r)(s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "Act of

1989”).

2. Appellants, apprehending their arrest in crime no. 326/2020, had filed an application under Section 438 of CrPC before the Special Court SC/ST (Prevention of Atrocities) Act, Koriya, Baikunthpur Chhattisgarh, which was dismissed by impugned orders dated 10.02.2021 and 19.04.2021, on the ground that in view of bar under Section 18 of the Act of 1989, application under Section 438 of CrPC is not maintainable.

3. Case of the prosecution in brief is, that in the year 2017, complainant Ramji Singh Ravi @ Ramkumar along with his wife had agreed to purchase a residential accommodation having the built up area of 1500 sqft. from Sanjay Agrawal and his wife Seema Agrawal, Directors of Maa Vaishnav Associate Pvt. Ltd. for a consideration of Rs. 25 Lac. After the agreement between the parties, complainant has given Rs. 1 lac as advance to Sanjay Agrawal (appellant in CRA 568/2021) through a cheque of Union Bank on 10.05.2017. Complainant has further paid the amount through self bearer cheque to Sanjay Agrawal and Rs. 7 Lac in cash in installments. When even after lapse of much time, construction was not started. Complainant asked for return of his money, upon which, Sanjay Agrawal handed over the accommodation in the shape of shop of 230 sqft area and has given him assurance that he will give the accommodation as agreed at the earliest. Till the date of filing of complaint ie. on 14.12.2020, appellants have not handed over the accommodation to the complainant and whenever he asked for return of money, they have stated that they will give him a constructed house. When the Municipal Corporation took action over the constructed colony of Sanjay Agrawal, at that time, complainant came in fear that he would loose his money and asked the appellants to return the money immediately. On which, appellant Seema Agrawal treated the complainant in foul language. Thereafter, Sanjay Agrawal was arrested in some offence, upon which, complainant realized

that he has been cheated and lodged F.I.R. Based on the report made by the complainant, instant crime was registered against the appellants.

4. Mr. Rajkumar Gupta, learned counsel for the appellants would argue that the nature of dispute as alleged against the present appellants is purely of civil nature. He submits that the appellants have agreed for handing over a constructed accommodation to the complainant to which they have never denied but have stated that they would construct and handover which is apparent from the allegation levelled against the appellants. He further pointed out that a constructed shop has been handed over to the complainant. The land over which the accommodation was constructed has been sold to complainant *vide* registered sale deed dated 28.06.2017 signed by appellant Sanjay Agrawal. He further argued that to accept the allegation of cheating, there should be some criminal act of cheating by the person against whom allegation is made from the date of inception which is not there, hence, the offence under Section 420 IPC would not be made out. It is further argued that the allegation and complaint lodged by complainant is politically motivated, hence, appellants may be protected. Reiterating his submission, learned counsel further submits that from perusal of complaint, at the most, there will be breach of contract/ agreement, hence, criminal case would not be made out against appellants. In support of his submissions, he places his reliance in the judgment passed by Hon'ble Supreme Court in case of ***Uma Shankar Gopalika v. State of Bihar and another*** reported in (2005) 10 SCC 336 and ***Vesa Holding Pvt. Ltd. and another v. State of Kerala and others*** reported in (2015) 8 SCC 293.

5. Mr. Vimlesh Bajpai, learned Deputy Government Advocate for the State while opposing the submission made by learned counsel for the appellants would submit, that there is specific allegation against the appellants of cheating with complainant. He submits that as per the complaint made by

Ramji Singh Ravi @ Ramkumar, there is specific mention that the appellants agreed to give accommodation having built up area of 1500 sqft and took money but they have not handed over the same as agreed. He further submits that the loan papers processed by the complainant for purchase of the property, the constructed accommodation to be of 1400 sqft, whereas the accommodation given to complainant is of 450+480 sqft. Accommodation given to complainant is constructed on Khasra no. 243/3 whereas the plot sold is of khasra no. 243/2. He further submitted that the amount has been paid to the appellant Sanjay Agrawal through the bearer cheque and Demand Draft of Rs. 6.50 Lac. It is also submitted that as the offence under Section 3(2)(va) and 3(1)(r)(s) of the Act of 1989 is registered against the present appellants. Appeal is not maintainable for grant of anticipatory bail in view of bar under Section 18 of the Act of 1989.

6. Mr. Pragalbha Sharma, learned counsel for objector submits that the bail application under Section 438 of CrPC is not maintainable in view of bar under Section 18 of the Act of 1989. Appeal would not be maintainable for grant of anticipatory bail. He further relied upon the submissions made by learned counsel for State.

At this stage, Mr. R.K. Gupta, learned counsel for the appellants would rely upon the judgment passed by the Supreme Court in the case of ***Prathvi Raj Chauhan v. Union of India and others*** reported in **(2020) 4 SCC 727**, ***Sushila Aggarwal and others v. State (NCT of Delhi) and another*** reported in **(2020) 5 SCC 1**, to submit that merely registering a case under the Act of 1989 would not in itself will preclude the Court for considering the application for grant of anticipatory bail when *prima facie* the alleged offence itself is not made out.

7. I have heard learned counsel for the respective parties.
8. From perusal of F.I.R. registered based upon the written complaint lodged

by Ramji Singh Ravi would show that the complainant entered into the agreement with Sanjay Agrawal. He deposited bearer cheque to Sanjay Agrawal and there was agreement between Sanjay Agrawal and the complainant. Perusal of sale deed would further show that the sale deed was executed in the name of appellant Seema Agrawal by power of attorney holder Sanjay Agrawal. As per the contents of F.I.R. and complaint, Seema Agrawal was found present in the office when the complainant along with his wife went there to pay the advance amount of Rs. 1 Lac to Sanjay Agrawal. However, as per khasra naksha available in the case diary would show that there is no construction over the land bearing khasra number 243/2 admeasuring 0.002 hectare as mentioned in the sale deed. This fact of the land sold to complainant bearing khasra no. 243/2 where no construction has been made is not disputed by learned counsel for the appellants.

9. Taking entirety of the facts and circumstances of the case, particularly, there is no denial of the dealing of Sanjay Agrawal with complainant for sale of accommodation and further that the accommodation has not been constructed over the land sold to the complainant and the accommodation has stated to be handed over to the complainant is of lesser construction on different land. Complainant has placed the caste certificate before the police where it is mentioned that the complainant belongs to SC community. In the opinion of this Court, sofar as the appeal filed by Sanjay Agrawal ie. CRA No. 568/2021 for grant of anticipatory bail is not maintainable in view of the bar under Section 18 of the Act of 1989 and also the judgment passed by Supreme Court in case of **Prathvi Raj Chauhan (supra)**. Other judgment relied upon by the learned counsel for the appellants ie. **Umashankar Gopalika (supra)** and **Vesa Holding Pvt Ltd (supra)** are not applicable to the fact of present case.

10. Sofar as, the appeal filed by Seema Agrawal ie. CRA No. 328/2021 is concerned, perusal of F.I.R. and the statement recorded under Section 161 Cr.P.C. would show that complainant agreed to purchase property from Sanjay Agrawal, one of the Directors of the Company ie. *Maa Vaishnav Associate Pvt Ltd*. He paid advance of Rs. 1 Lac to Sanjay Agrawal for which receipt has also been given by Sanjay Agrawal. Payment was made through self bearer cheque. Further amount was also given to Sanjay Agrawal. Sale deed was executed by Sanjay Agrawal as power of attorney holder of present appellant, she has not signed the sale deed. Taking into consideration the facts and circumstances of the case in its entirety and nature of allegation levelled against the appellant, in the opinion of this Court, prima facie, the alleged offence of cheating would not be made out against her.
11. True it is that the application for anticipatory bail in normal circumstances is barred under Section 18 of the Act of 1989 but when the applicant is able to make out a case that the allegation levelled against him/her is absolutely false and baseless then lodging some offence under the provisions of Act of 1989 will not come in the way.
12. Hon'ble Supreme Court in the judgment of **Dr. Subhash Kashinath Mahajan v. State of Maharashtra and another** reported in **(2018) 6 SCC 454**, 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."

13. 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."

14. In view of the above, taking into consideration the nature of allegation, entirety of the facts and circumstances of the case and the material available in the case diary, I am inclined to grant anticipatory bail to appellant in CRA No. 328/2021.
15. Accordingly, application filed by Seema Agrawal bearing CRA No. 328/2021 is allowed and it is directed that in the event of arrest of applicant in connection with the crime in question (326/2020), she shall be released on anticipatory bail by the Officer arresting her on her executing a personal bond in the sum of Rs. 50,000/- 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.
16. Appeal bearing no. CRA 568/2021 filed by Sanjay Agrawal is dismissed.

Sd/-
(Parth Prateem Sahu)
Judge