

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 342 of 2021**

- Madhu Kumar Gurung S/o Shri Jeet Kumar Gurung, aged about 48 years, R/o Hemunagar Ward No.38, Near Narayani Apartment, Police Station Torwa, District Bilaspur (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh, Through : Incharge, Police Station, AJAK Bilaspur (C.G.)

---- Respondent

For Appellant	:	Mr. Ajay Kumar Dwivedi, Advocate
For Respondent	:	Mr. Sameer Uraon, G.A.
For Objector	:	Mr. Ashutosh Mishra, Advocate.

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.01/2021, registered at Police Station - AJAK, Bilaspur, District Bilaspur (C.G.) for the offence punishable under Sections 420 IPC and Sections 3(1)(d) & (3)(1)(G) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity), Act, 1989.
2. The prosecution story, in brief, is that the complainant, who is a member of Scheduled Tribe, entered into an agreement of construction of house with the appellant and paid Rs.27,50,000/- to him, but the applicant did not complete the assignment and cheque given by the

appellant as security was also got dishonoured. It is alleged that on 21.05.2020 when the complainant went to market to purchase vegetables, the appellant came there and started abusing him in the name of caste. Based on this FIR has been registered 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 agreement for construction of house was for 1371.85 sq.ft, but at the time of completion the actual construction was measured as 1900 sq.ft which is more than the agreement, for which extra payment had to be made by the complainant. Thus, to escape from payment of excess construction amount, the false complainant has been lodged against the appellant. He further submits that the appellant has not uttered even a single word about the complaint's caste.
4. On the other hand, learned counsel for the State opposed the bail application. Learned counsel submits that there are two eye-witnesses to the incident who have categorically stated against the appellant that he insulted and abused the complainant by caste name in public place.
5. Learned counsel for objector vehemently opposed the bail application and submits that the appellant intentionally insulted the complainant and abused him by caste name in public place.
6. I have heard learned counsel for the parties and perused the record.
7. The Co-ordinate Bench of this Court, in the matter of **Pavas Sharma Vs. State of Chhattisgarh and another (CRA No. 806/2020, order dated**

22.01.2021), has elaborately dealt with the issue pertaining to offence under the Act, 1989 and finds that merely because offence under Section 3(2)(V)(a) of the Act, 1989 was registered against the applicant, learned court below rejected the application holding it to be not maintainable in view of the provisions contained under Section 18 of the Act of 1989, without taking into consideration the law laid down by the Supreme Court in the case of **Prathvi Raj Chouhan Vs. Union of India and Others**¹. Even though, offence under the Act of 1989 is registered, where application for grant of anticipatory bail is filed, the Court is required to apply its mind to the relevant provisions of law and considerations as specified by the Supreme Court in the case of **Prathvi** (supra) and if material on record leads to satisfaction that the complaint does not make out a prima facie case, for applicability of the provisions of the Act of 1989, the bar created under Section 18 of the Act of 1989 shall not apply and in appropriate cases of exceptional nature, benefit of anticipatory bail could be admitted to the applicant. The learned Court below committed patent illegality in mechanically rejecting the bail application. Order of rejection, therefore, cannot be sustained in law, and therefore set aside.

8. After hearing counsel for the parties and considering the facts and circumstances of the case, and in view of the order passed by this Court in **Pavas** (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/-

¹ (2020) 4 SCC 727

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 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