

(Proceedings through video conferencing)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No.426 of 2021

Saif Ali S/o Mohd. Ikram (wrongly mentioned as Mohd. Ishaq in order sheet) Aged About 26 Years Resident Of Village Sukhasupara, Bagicha, Police Station Bagicha, District Jashpur Chhattisgarh.

---- Appellant

Versus

State of Chhattisgarh Through The Station House Officer, Police Station, Bagicha, District Jashpur Chhattisgarh.

....Respondent

For Appellant	:	Mr. Sanjeev Kumar Sahu, Advocate
For Respondent	:	Mr. Vimlesh Bajpai, Govt. Advocate

Hon'ble Mr. Justice Parth Prateem Sahu

Order On Board

15.07.2021

1. This criminal appeal under Section 14-A(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act of 1989') has been preferred against the order dated 10.03.2021 passed by learned Special Judge (Atrocity), Jashpur, District Jashpur, C.G. rejecting application of the appellant for grant of anticipatory bail in connection with Crime No.12 of 2021 registered at Police Station Bagicha, District Jashpur, C.G., for commission of offence punishable under Sections 376(2)(n) of the Indian Penal Code and Sections 3 (2) (v) of the Act of 1989.
2. Case of the prosecution, in brief, is that appellant had made physical relationship with complaint/prosecutrix on the pretext of marriage, thereafter, prosecutrix became pregnant and

gave birth to one child on 25.11.2020. After birth of child, present applicant refused to marry her and thereafter, complaint was lodged on 19.01.2021, based upon which, instant crime was registered against the present appellant.

3. Mr. Sanjeev Kumar Sahu, learned counsel for the appellant would submit that absolutely false and baseless allegation are levelled against present appellant. He submits that complainant and present appellant were in love affair since 2018. The complainant/prosecutrix is a major girl, aged about 25 year as on the date and she was aged about 22 years in the year 2018. He further submits that appellant has not made any promise of marriage before making physical relationship. There is inordinate delay in filing of First Information Report and from the contentions of First Information Report, it would show that complainant/prosecutrix herself is a consenting party.
4. Per contra, Mr. Vimlesh Bajpai, learned Govt. Advocate for the State opposes the submissions made by learned counsel for the appellant and submits that anticipatory bail application itself is not maintainable in view of specific bar under Section 18 of the Act of 1989, hence, learned Court below rightly dismissed the application to be not maintainable. He further read over the contents of First Information Report as well as contents of statement recorded under Section 164 of Cr.P.C. of complainant in support of his contention. It is contended that complainant/prosecutrix appeared in person on

05.07.2021 and stated that she is having an objection on grant of bail to the present appellant. On that day, case diary was not available hence the case could not be heard.

5. At this stage, Mr. Sanjeev Kumar Sahu, learned counsel for the appellant would submit that specific bar under Section 18 of the Act of 1989 would not apply in the facts of the case as the allegation levelled against the present appellant is absolutely false and baseless.
6. I have heard learned counsel for the parties.
7. So far as the submission of learned counsel for the State with regard to maintainability of application for grant of anticipatory bail, in view of provisions of Section 18 of the Act of 1989, upon going through the contents of statement recorded under Section 164 of the Cr.P.C. of complainant/prosecutrix, it is appellant that no allegation was levelled against the present appellant that appellant has initially made physical relationship on the pretext of marriage, but statement of prosecutrix would reveal that on account of love affair, they have developed physical relationship.
8. On appreciating the submission made by learned counsel for the State based on material available in the case diary, it is apparent that prosecutrix has not made allegation of false promise before making physical relationship in statement under Section 164 of Cr.P.C. and prosecutrix is major girl.

9. The Hon'ble Supreme Court in cases of **Dr. Subhash Kashinath Mahajan vs. State of Maharashtra & another** reported in **(2018) 6 SCC 454** and **Prathvi Raj Chauhan Vs. Union of India & ors** reported in **(2020) 4 SCC 727** have held that bar under Section 18 of the Act of 1989 would not come in the way for considering the application for grant of anticipatory bail when prima facie allegation levelled against the appellant appears to be absolutely false and frivolous. Therefore, in view of aforementioned facts and circumstances of the case and considering the aforementioned rulings of Hon'ble Supreme Court, I am of the view that the bar under Section 18 of the Act of 1989 will not come in the way of considering the application for grant of anticipatory bail filed by the appellant in the facts of the case.
10. Considering the nature of allegations levelled by the complainant/prosecutrix in her statement recorded under Section 164 of Cr.P.C. that they were having love affair since 2018, there was no allegation that they have made physical relationship only on the pretext of false promise of marriage; there is no mention by the prosecutrix that they have developed physical relationship only on the pretext of marriage in her 164 Cr.P.C. statement; the prosecutrix was 22 years of age in 2018 and now is 25 years of age and as per case of the prosecution, they have made physical relationship lastly in the month of February 2020, without commenting anything into the merits of the case, I am inclined to grant

anticipatory bail to the appellant.

11. Accordingly, the appeal is allowed and it is directed that in the event of arrest of appellant in connection with the crime in question, he be released on anticipatory bail by the Officer arresting him on his executing a personal bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with one surety in the like sum to the satisfaction of the concerned Investigating Officer. The appellant shall also abide by the following conditions :

(i) that the appellant shall make himself available for interrogation before the 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 so 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/-
(Parth Prateem Sahu)
Judge