

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**CRA No. 451 of 2021**

1. Raja Ram Sahu, son of Kanti Kumar Sahu, aged about 46 years
2. Ashlok Sahu son of Rajaram Sahu, aged about 19 years
3. Mahesh Sahu son of Krishan Kumar Sahu, aged about 35 years

All above are resident of Village Kochila, P.S. Patana, District Korea, Chhattisgarh

4. Amit Jaiswal son of late Ramlal Jaiswal aged about 36 years resident of village-Chhindiya P.S. Patana District Korea Chhattisgarh

-----Appellants

VERSUS

- State of Chhattisgarh through: Police Station: Baikunthpur (SC/ST Prevention of Atrocities), District- Korea, Chhattisgarh

-----Respondent

For Appellants	: Mr. Ajit Singh, Advocate
For Respondent- State	: Mr. Vimlesh Bajpai, Govt. Adv.
For complainant	: Mr. Ashok Shukla, Advocate

(Through Video Conferencing)

Hon'ble Shri Parth Prateem Sahu, Judge
ORDER

30/07/2021

1. This appeal arises out of rejection of an application filed under Section 438 of CrPC filed in connection with crime bearing no. 06/2021, registered at Police Station- Baikunthpur, District Korea, Chhattisgarh, for offences defined under Sections 354, 354A, 458, 294, 506, 323 r/w 34 of IPC and Section 3(2)(Va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "Act of 1989").
2. Appellants apprehending their arrest in crime no. 06/2021, had filed an application under Section 438 of CrPC before the Special Judge

(SC/ST Prevention of Atrocities) Act, Baikunthpur, District Korea, Chhattisgarh, which was dismissed by impugned order dated 15.03.2021.

3. Case of the prosecution is, that on the basis of written report on 19.02.2021 of the incident dated 15.02.2021, instant crime was registered against present appellants. In the written complaint, the victim has mentioned that in the night of 15.02.2021 at about 08:00 pm, victim was alone in her house, at that time, present appellants entered into the house, abused her in filthy language and by her caste, and also tried to assault her. They were asking of whereabouts of her father and brother. There was also allegation that the appellants have tried to hold her hands and waist and thereafter misbehaved with her. On the aforementioned complaint, crime was registered for the aforementioned offence against present appellants.
4. Mr. Ajit Singh, learned counsel for the appellants submits that on 15.02.2021 at about 09:30 a.m. in the morning, appellant no. 2/ Ashlok Sahu was going for his online practical examination on his two-wheeler scooty. On the way, he met with an accident with motor cycle driven by unknown person. After sometime, there was settlement between the driver of two motor vehicles, upon which, appellant 2/ Ashlok Sahu started going on his way. At that relevant time, Ramkumar and his son Shailendra @ Shailu (father and brother of complainant) came there and started abusing him in filthy language and in the name of mother and sister, caught hold of his collar. Appellant no. 1 came on spot and tried to intervene. Ramkumar and Shailu have assaulted them by means of iron pipe and Ramkumar has also bitten cheek of appellant no. 1. It is Rajaram Sahu who has lodged the report to police station

immediately after the incident at about 10:05 a.m. itself against Ramkumar and Shailu who are father and brother of victim/complainant. Appellant no. 1/ Rajaram Sahu and Ashlok were sent for MLC from the police station at Community Health Centre, Patana, Korea. On 15.02.2021, MLC of appellant no. 1 was conducted at 10:30 a.m. MLC of appellant no. 2/ Ashlok Sahu was also conducted at 10:40 am. Rajaram Sahu was admitted in the hospital on 15.02.2021 and discharged on 18.02.2021. After lodging of complaint by Rajaram Sahu, Ramkumar and Shailu were arrested. They were released on bail on 17.02.2021 and thereafter the false report has been lodged on 19.02.2021 only with the intent to implicate the present appellants in severe case. He also submits that after release of Ramkumar and Shailu from jail, one Omprakash Kurrey while crossing their house, abusing and threatened of outcome of their lodging report which was intimated to the concerned police station by filing report but the police drawn the proceeding under Section 155 of CrPC on 18.02.2021. He also pointed out that the documents placed on record by the learned counsel for the victim/ objector, only mention with regard to incident happened in the morning. There is no mention with regard to any incident took place in that evening. The attempt is to implicate the present appellants falsely, hence, they may be enlarged on anticipatory bail.

5. Mr. Vimlesh Bajpai, learned State counsel opposing the submissions made by learned counsel for the appellants would submit that the Court below has dismissed the application for grant of anticipatory bail filed under Section 438 of CrPC in view of the allegation levelled against the present appellants for commission of offence. Under the provisions of SC/ ST Act, 1989, bail application

itself is not maintainable in view of specific bar under Section 18 of SC/ST Act. He further submits that there is specific allegation in the report on 19.02.2021 that the appellants entered into the house, abused the victim/ complainant in the name of caste and also used filthy language, caught hold of her. The mother and cousin brother in their statement recorded under Section 161 of CrPC have supported the allegation levelled against the present appellants, hence they are not entitled for grant of anticipatory bail.

6. Mr. Ashok Shukla, learned counsel for victim, is appearing in pursuance of notice issued under Section 15A(3) of SC/ST Act, submits that immediately after the incident in the morning, Ramkumar went to lodge the complaint and when the police authorities of police station Patana did not lodge his report, written report was lodged before the Office of Superintendent of Police (SP) on 15.02.2021 itself. He further submits that the incident as mentioned in Annexure O/1 is of the morning and thereafter the complaint which was lodged by the daughter (victim/ complainant) of Ramkumar is the incident of evening. There are two different incidents on the same day one in the morning and other in the evening. The delay has been sufficiently explained in the F.I.R. itself that the complaint is made to the concerned police station after release of her father from jail. He submits that as there is specific allegation of abusing in the name of caste and misbehaving with the complainant belonging to SC community, application for grant of anticipatory bail is not maintainable. He submits that the appellants are influential persons and they may further make pressure upon complainant, hence they are not entitled for grant of anticipatory bail.

7. I have heard learned counsel for the respective parties.

8. The appellants have placed on record of copy of F.I.R. on the report by Rajaram Sahu on 15.02.2021 at 10:05 a.m. with regard to incident of 09:30 a.m. In the F.I.R., there is specific mention that the father and brother of victim/ complainant have assaulted them by means of iron pipe and father of victim has also bitten the cheek of Rajaram Sahu. Son of Rajaram Sahu, Ashlok was also assaulted. Both of them were sent for medical examination and MLC was conducted on 10:30 a.m. and 10:40 a.m. respectively on the same day. Looking to the injury, as per document placed on record, Rajaram Sahu was treated as in-patient in CHC Community Health Centre, Patana, Distt. Korea from 15.02.2021 to 18.02.2021. Written complaint lodged against the present appellants for the incident of 15.02.2021 was only on 19.02.2021. In the written complaint, there is no mention that the incident alleged in the complaint was the counter-blast or outcome of any incident which has taken place in the morning at about 09:30 am. Further there is no mention that prior to it they have made any attempt to lodge a complaint as argued by learned counsel for the objector while referring to Annexure O/1. In the complaint, there is no mention of incident as narrated in Annexure O/1, which is a typed complaint by mother of present complainant. 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 that in exceptional circumstances if the appellants/ applicants make out a case of false implication then the High Court can consider the application for grant of anticipatory bail.
9. In view of the aforementioned facts and circumstances available on record which were not disputed by learned counsel for objector,

nature of allegation and the aforementioned ruling of Supreme Court, I am of the view that present is a fit case where the application for grant of anticipatory bail can be considered.

10. Accordingly, appeal is allowed. It is directed that in the event of arrest of appellants in connection with the crime in question (06/2020), they shall be released on anticipatory bail by the Officer arresting them on their furnishing a personal bond in the sum of Rs. 25,000/- each with surety in the like sum to the satisfaction of the Arresting Officer. Appellants shall also abide by the following conditions:

- (i) that the applicants shall make themselves available for interrogation before the Investigation Officer as and when required;
- (ii) that the applicants 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 applicants shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that the applicants shall appear before the trial Court on each and every date given to them by the said Court till disposal of the trial.

Sd/-
(Parth Prateem Sahu)
 Judge