

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
CRA No. 592 of 2021

1. Nikhil Chouhan, S/o Mahesh Chouhan, Aged About 24 Years, R/o : Shitla Para, Kondagaon, District -Kondagaon, Chhattisgarh.
2. Siddharth Shrivastava, S/o Manish Shrivastava, Aged About 22 Years, R/o : Sargipal, Kondagaon, District -Kondagaon, Chhattisgarh.

---- Applicants

Versus

State of Chhattisgarh, Through - Police Station Kondagaon, District -Kondagaon, Chhattisgarh.

--- Respondent

For Applicants	:	Mr. Manoj Paranjpe, Advocate.
For Respondent-State	:	Mr. Vimlesh Bajpai, GA.
For Objector/Complainant	:	Mr. Kishore Narain, Advocate with complainant.

(Proceedings through video conferencing)
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

30/07/2021

Heard.

1. This criminal appeal under Section 14-A of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for short, 'the Act of 1989') is filed by appellants against the order dated 26.5.2021 passed by learned Additional Sessions Judge (FTC), Kondagaon, Distt-Kondagaon, (CG) whereby application of appellants filed under Section 438 of Cr.P.C has been dismissed on the ground that anticipatory bail application is not maintainable in view of bar under the provisions of Section 18 of the Act, 1989.
2. Appellants are apprehending their arrest in connection with Crime No.77/2021 registered at Police Station – Kondagaon, Distt – Kondagaon (CG), for the offence punishable under Sections 147, 294, 323, 506 read with Section 34 of Indian Penal Code and Sections 3(1) (r), 3 (1) (s), 3 (2) (va) of the Act of 1989.

3. Case of the prosecution, in brief, is that on 12.03.2021 at about 06:30 p.m., when complainant was closing gate of Municipal Corporation Stadium to avoid any hindrance in practice, at that time, appellants herein came there on two wheeler, seeing the act of complainant of closing gate of stadium started hurling filthy abuses at him, manhandled and assaulted him by hands & feet. Thereafter, appellants called their other friends by name Siddharth Srivastava, Sajid Khan, Rituraj Bharti & others and they also assaulted complainant by means of hands and feet apart from hurling filthy abuses at him. As a result, complainant suffered injuries over his person. One Dipesh Yadav, who came there to intervene, was also assaulted by appellants and their friends. Incident was reported to the concerned Police Station immediately after the incident, based upon which instant crime under Sections 147, 294, 323, 506 read with Section 34 of IPC is registered against present appellants. Subsequently, on the same day at about 10:00 p.m., based upon written complaint lodged by complainant alleging therein that accused persons have also abused him in the name of his caste, offences under Sections 3(1)(r), 3(1)(s) & 3 (2)(va) of the Act of 1989 are also registered against appellants along with offence under Section 147, 294, 323, 506 read with Section 34 of IPC.
4. Shri Manoj Paranjpe, learned counsel for the appellants submits that complainant has lodged report of incident immediately i.e. within one hour of incident, based upon which Crime No.77/2021 for commission of offence under Sections 147, 294, 323, 506 read with Section 34 of IPC is registered against present appellants. He submits that perusal of FIR registered immediately after the incident, which is also placed on record by him as Annexure A-2, would show that there is no mention that

appellants have abused the complainant in the name of his caste or that they were aware about the social status of complainant. However, after indulgence of some political persons, who are keeping rivalry with present appellants, a written complaint was made by complainant on the same day i.e. after two hours of lodging of first report, wherein he mentioned that appellants have abused him by his caste and also assaulted him. He submits that this written complaint is an afterthought and made with ill intention to implicate present appellants for graver crime. He submits that complainant is a educated person. Allegation of offence under the Act of 1989 is false and baseless, hence application for grant of anticipatory bail is maintainable in view of law laid down by Hon'ble Supreme Court in cases of **Dinesh Alias Buddha versus State of Rajasthan** reported in **2006 (3) SCC 771** & **Prathvi Raj Chauhan vs. Union of India and Ors** reported in **(2020) 4 SCC 727**.

5. Shri Vimlesh Bajpai, learned State Counsel opposes the submissions made by learned counsel for the appellants and submits that as per contents of written complaint and FIR there is specific allegation of abusing complainant in the name of his caste. As appellants have abused complainant by his caste, they were well aware with regard to his social status. However, on putting a specific query to learned State Counsel with regard to veracity of FIR (Annexure A-2), he replied that this is first report lodged after the incident at about 7:30 pm, which is stated to be happened at 6:30 pm., Upon asking, he read over the first report and submits that in first report, there is no mention that appellants have abused complainant by his caste but there is specific mention that they have used filthy words, abused him in the name of his mother and also assaulted him. There is no mention that the act was done only because

the complainant belongs to a particularly caste. He further submits that as in subsequently FIR offences under the Act of 1989 were registered against the appellants, therefore, in view of the bar under Section 18 of the Act of 1989, anticipatory bail application is not maintainable and learned Court below has rightly dismissed the same.

6. Complainant is present in person through Video Conferencing from DLSA Kondagaon and Shri Kishore Narain, Advocate also present stating that he has been engaged today itself in the morning by complainant to appear on his behalf.
7. Upon asking the complainant with regard to lodging of complaint, he submits that immediately after the incident, he went to concerned Police Station, orally informed about the incident to the police based upon which FIR is registered. He further submits that as the police personnel, who wrote his complaint, has not registered the complaint as per his statement, therefore, he has made a written complaint narrating all the facts, based upon which the offences punishable under the Act of 1989 are also added. He also submits that appellants are not only involved in instant crime but they have committed several crimes of like nature. Hence, they may not be released on anticipatory bail.
8. Shri Kishore Narain, learned counsel for the Objector/complainant submits that he adopts the submissions made by learned State Counsel as well as submissions of complainant. He further submits that as the complainant has already stated that present appellants are also involved in other offences of like nature, they may not be granted anticipatory bail. He further submits that in view of bar under Section 18 of the Act of 1989, anticipatory bail application itself is not maintainable.
9. I have heard learned counsel for the parties.

10. From perusal of FIR (Annexure A-2) and statements made by complainant, who is present before this Court, it is clear that on the basis of oral complaint made by complainant, FIR was registered. Perusal of FIR would show that there is no allegation that appellants have abused complainant by his caste, assaulted and abused him only because of his social status. The allegations in written complaint of offence under Act of 1989 was after two hours of lodgment of FIR, based upon which supplementary report was registered on the same crime number.
11. Upon asking about the police personnel who registered FIR, learned State Counsel replied that it is the Assistant Sub-Inspector Dinesh Kumar Dhariya, second/supplementary report based on written complaint was also registered by the same officer ie Dinesh Kumar Dhariya.
12. It is not a case that after the registration of FIR by ASI Dinesh Kumar Dhariya to be not in accordance with the statement of complainant, he approached some higher authority by filing written complaint and only thereafter as per direction of the higher authority, some other police personnel or same has registered supplementary report of complainant.
13. So far as submissions made by learned counsel for the Objector/complainant as well as complainant regarding involvement of appellants in some other offences of similar kind on query, learned State Counsel submits that there is no material available in case diary showing that other similar kind of offences are registered against appellants.
14. Considering the entire facts and circumstances of the case, nature of allegation, particularly first FIR registered within an hour of incident ie 7:30 pm wherein there is no mention of abusing complainant by his caste, written complaint has been lodged after 2 hours of first complaint,

in the light of the rulings rendered by Hon'ble Supreme Court in cases of **Dinesh Alias Buddha vs State of Rajasthan** reported in **2006 (3) SCC 771** & **Prathvi Raj Chauhan vs. Union of India and Ors** reported in **(2020) 4 SCC 727**, I am of the view that appellants have made out a case where application of appellants filed under Section 438 of Cr.P.C can be considered.

15. Accordingly, appeal is allowed and it is directed that in the event of arrest of appellants in connection with the crime in question, they shall be released on bail by the Officer Arresting them on their executing a personal bond in sum of Rs.25,000/- each with one surety in the like sum to the satisfaction of the concerned Arresting Officer. The appellants shall also abide by the following conditions :

- (i) that the appellants shall make themselves for interrogation before the investigating officer as and when required;
- (ii) that the appellants 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 appellants shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that the appellants 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

Jamal/-