

(Proceedings through video conferencing)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No.646 of 2021

- Surya Kant Mishra @ Sheshmani Mishra @ Rudra Mishra, S/o Shri G.P. Mishra, aged about 45 years, R/o S.M.I.G.-34, Bajpai Castle, Minocha Colony, Bilaspur, P.S. Civil Line, Bilaspur, District Bilaspur (CG) (Actual name of appellant is Sheshmani Mishra)

---- Appellant

Versus

- State of Chhattisgarh, through PS- Anusuchit Jan Jati Kalyan Vibhag, Raipur, CG, (AJK, Raipur).

....Respondent

For Appellant	:	Mr. Pawan Shrivastava, Advocate
For Respondents	:	Mr. B.P. Banjare, Dy., Govt. Advocate

One of the complainant (wife) is present in person through virtual mode.

Hon'ble Mr. Justice Parth Prateem Sahu

Order On Board

22/7/2021

1. This criminal appeal under Section 14-A (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act of 1989') has been preferred against the order dated 27.3.2021 passed by the learned Special Judge (Atrocities) Raipur in Bail Application No.600/21 rejecting application of present appellant for grant of anticipatory bail in connection with Crime No.1/2021 registered at Police Station AJK, Raipur for commission of offence punishable under Sections 294, 506, 354, 354 (क) & 354 (ख) of the Indian Penal Code and Sections 3 (1) (b) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989.

2. Case of the prosecution, in brief, is that the complainant and her husband submitted a written complaint before the Senior Superintendent of Police, Raipur and also the Station House In-charge, Police Station New Rajendra Nagar, Raipur stating that on 31.12.2019, on the eve of new year celebration, they met with present appellant for the first time in a hotel and thereafter relationship between the family of complainant and family of present applicant had developed. Appellant projected himself to be the Assistant Director, Department of Women & Child Development. He stated that he is having good relations with one builder by name Rajesh Agrawal and he can arrange for them contract work of painting in Balodabazar, Indore & Khandwa. For the aforesaid purpose, present applicant initially demanded Rs.15,000/- and thereafter made demands of further amount. Till lodgement of complaint the complainants have made total payment of Rs.15,00,000/- to present applicant. On 4.9.2020 at about 10:00 -11:00 a.m. present applicant called complainant wife of Wilson John Tirkey on her mobile from his mobile and asked her to come on Vidhaan Sabha Road, Raipur. When complainant Shashi Tirkey reached there, present applicant, who was standing on road, came inside the car, sat on the seat next to driver's seat and asked the complainant to move ahead. After travelling some distance in car, present applicant made sexual demand to the complainant. Appellant put his hand inside Kurta of complainant and started pressing her breasts. When she resisted the act of appellant, he pulled her towards him due to

which her Kurta got torn. When the complainant raised objection, present applicant abused her filthily in the name of mother etc. and also in the name of her caste. Thereafter, present appellant went out of car giving threat to complainant that if she will disclose this fact to anyone, he would kill her. On the basis of said complaint, instant crime is registered against present appellant for commission of aforementioned offences.

3. Mr. Pawan Shrivastava, learned counsel for appellant submits that the complainants have made false and fabricated complaint against present applicant with ulterior motive. He submits that both the parties were known to each other and they were having visiting terms. On the request made by complainants, present appellant gave loan of Rs.32,00,700/- to them and two agreements of loan transactions were executed between them on 21.5.2020. One agreement is in respect of loan of Rs.15,00,000/- and another for Rs.17,00,700/-. When the complainants failed to return the loan amount in time, on 13.8.2020 the complainant - husband sold his Honda City car to present appellant for Rs.4,50,000/- for which a notarized deed under the heading 'vehicle sale deed' was also executed between the parties. Learned Counsel also pointed out that on 23.11.2020 the complainant husband forcibly taken back Honda City car regarding which FIR was lodged by present applicant on 24.11.2020, but the police drawn proceedings under Section 155 of CrPC vide

Annexure A-4. When the appellant demanded back loan amount given by him and his wife, the complainant party issued cheque dated 6.9.2020 amounting to Rs.5,00,000/- and cheque dated 19.11.2020 of Rs.25,00,000/-, both in favour of appellant. On 24.11.2020 both the cheques were presented by appellant for encashment, but the same were dishonoured on 24.11.2020 due to stop payment instructions. One another cheque of Rs.4,00,000/- issued in favour of Swati Mishra, wife of appellant, was also dishonoured due to same reason. Cheque of Rs.5,66,900/-, drawn on Indian Bank, issued by complainant husband was also dishonoured due to insufficient funds in bank account. He submits that when appellant demanded back his money, as much time is elapsed after the agreed date of return, the complainants have made false complaint against present appellant. After dishonour of cheques, present appellant had issued legal notice to the complainants through his advocate demanding amount of cheques and also filed complaint case under Section 138 of the Negotiable Instruments Act, 1881 before the competent Court. He further submits that all the relevant documents are placed on record as also made available to the police personnel. Hence, the appellant may be extended benefit of anticipatory bail under Section 438 of CrPC.

4. Mr. B.P. Banjare, learned Deputy Government Advocate for the State opposing the submissions made by learned counsel for appellant would submit that anticipatory bail application

was rejected by the Court below on the ground that there is statutory bar under Section 18 of the Act of 1989 in entertaining anticipatory bail application where commission of offence under the Act of 1989 is alleged, hence present bail application is not maintainable. He further submits that the complainant wife in her complaint as also statement has levelled serious allegations against present applicant.

5. One of the complainant (wife) is present in person through virtual mode pursuant to notice issued to her under Section 15A (3) of the Act of 1989. She expresses her objection to grant of anticipatory bail to present appellant. She submits that they have not only been cheated by present appellant, but he had made sexual assaults on her and also abused her filthily in the name of her mother etc. and caste. Appellant also gave threat of life to her on the point of knife. She also stated that earlier she was working in Delhi.
6. At this stage, Mr. Pawan Shrivastava, learned counsel for appellant would submit that bar under Section 18 of the Act of 1989 will not be applicable in the case at hand for the reason that false and frivolous complaint is lodged against present appellant with ill intention. He further submits that if the entire allegations made in the complaint are taken as it is, then also the same do not attract alleged provision of the Act of 1989 levelled against applicant, therefore, present anticipatory bail application is maintainable. He places his reliance on the decision of Hon'ble Supreme Court in cases of **Dr. Subhash**

Kashinath Mahajan vs. State of Maharashtra & another reported in **(2018) 6 SCC 454**; **Prathvi Raj Chauhan Vs. Union of India & ors** reported in **(2020) 4 SCC 727** and this High Court in **Praveen Kumar Sahu vs. State of Chhattisgarh** reported in **(2007) 2 CGLJ 152**; order dated 9.4.2018 in M.Cr.C. (A) No.108/2018; order dated 1.7.2020 in M.Cr.C.(A) Nos.506/2020 & order dated 6.7.2021 in Cr.A. No.650/2021.

7. I have heard learned counsel for the parties and perused the case diary.
8. Initially, on 20.11.2020 a written complaint was filed under joint signatures of husband and wife wherein there is no whisper about incident dated 4.9.2020, but for the facts that appellant made demand for sexual favours to the complainant wife; he caught hold of her hands etc. This complaint was made before the Senior Superintendent of Police, Raipur as also in the Police Station New Rajendra Nagar, Raipur. One another typed complaint is filed under signature of one of the complainant (wife) on 25.11.2020 mentioning that she gave Rs.15,00,000/- under the hope of getting contract. There is no mention of any specific place, city or institution of which appellant has assured for providing contract. In this complaint, incident dated 4.9.2020 was reported for the first time, but there is no mention of Ambuja Mall where appellant had asked her to come. Statement of complainant wife under Section 161 of CrPC was recorded on 28.11.2020 wherein some more

allegations have been levelled. Upon putting a specific query with regard to agreements entered between the parties for the purpose of loan and also issuance of cheques, she replied that the documents were prepared by appellant. Agreements, cheques and complaint lodged by appellant of taking back of vehicle are available in the case diary.

9. True it is that when allegation for commission of offence under the Act of 1989 is made, anticipatory bail application is not maintainable in view of bar under Section 18 of the Act of 1989. The Hon'ble Supreme Court in cases of **Prathvi Raj Chouhan (supra)** and **Dr. Subhash Kashinath Mahajan (supra)** while considering this issue has held that only in exceptional case the High Court can consider the application for grant of anticipatory bail.
10. Taking into consideration the contents of first complaint dated 20.11.2020 filed under joint signature of complainant husband & wife; contents of complaint dated 25.11.2020 filed under the signature of complainant (wife) only, making allegation of the incident of 4.9.2020; her statement recorded under Section 161 of CrPC; entire facts and circumstances of the case; agreements of loan; issuance of cheques by the complainants; decisions of Hon'ble Supreme Court in cases of Dr. Subhash Kashinath (supra) & Prathvi Raj Chouhan (supra), in the opinion of this Court, application for grant of anticipatory bail can be considered.

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 furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Arresting Officer. The appellant shall also abide by following conditions :

- (i) the appellant shall make himself available for interrogation before the Investigating Officer as and when required;
- (ii) 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) the appellant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) 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

roshan/-