

(Proceedings through video conferencing)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No.650 of 2021

- Shashank Sharma, son of Late Sunil Sharma, aged about 30 years, R/o village Patharra, Bemetara, PS & District Bemetara.

---- Appellant

Versus

- State of Chhattisgarh, through the Station House Officer, Police Station Mahasamund (AJAK), District Mahasamund (CG).

....Respondent

For Appellant	:	Mr. Vivek Shrivastava, Advocate
For Respondents	:	Mr. Vimlesh Bajpai, Govt. Advocate

The prosecutrix is also present in person through virtual mode from the Help Desk of CG High Court Bar Association.

Hon'ble Mr. Justice Parth Prateem Sahu

Order On Board

06/07/2021

1. This criminal appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act of 1989') has been preferred against the order dated 11.6.2020 passed by learned Special Judge (SC & ST Act), Mahasamund rejecting application of the appellant for grant of anticipatory bail in connection with Crime No.112/2020 registered at Police Station Mahasamund (AJAK), for commission of offence punishable under Sections 376 (2) (A) (i), 376 (2) (B), 376 (D) & 506 of the Indian Penal Code and Sections 3 (2) (v) A & 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 (for brevity 'the Act of 1989').
2. Case of the prosecution, in brief, is that in the month of October, 2019 at about 10:00 p.m. the present appellant along with four co-accused persons came to the house of prosecutrix and committed forcible sexual intercourse with her. They have also prepared a video of forcible sexual intercourse with the prosecutrix and on the basis of that video and under

the threat of abduction of her child, the accused persons continued to commit forcible sexual intercourse with her.

3. Mr. Vivek Shrivastava, learned counsel for the appellant submits that the appellant, who is a government servant, has been falsely implicated in the offence in question and in case the appellant is arrested by the police, his entire service carrier will be ruined. He further submits that the prosecutrix has filed her affidavit before the Court below to the effect that accused persons have never committed forcible sexual intercourse with her and she has no objection if they are granted bail. Consequently, bail applications preferred by co-accused persons bearing M.Cr.C. Nos.3683/2020, 3674/2020 & 3727/2020 are allowed by a co-ordinate Bench vide orders dated 15.7.2020 & 21.7.2020 respectively and co-accused persons have been released on bail. Hence, the appellant may also be enlarged on anticipatory bail.
4. Per contra, Mr. Bajpai, learned Government Advocate for the State opposes the submissions made by learned counsel for the appellant and submits that apart from the offences under the Indian Penal Code, the offences under Section 3 (2)(v) A and 3 (2) (v) of the Act of 1989 have also been registered against the appellant, hence the application for grant of anticipatory bail to the appellant is not maintainable in view of specific bar contained in Section 18 of the Act of 1989. He further submits that allegations levelled by the prosecutrix in FIR are grievous in nature.
5. At this stage, Mr. Vivek Shrivastava, learned counsel for the appellant submits that though there is statutory bar under Section 18 of the Act of 1989 in entertaining application for grant of anticipatory bail, but the Court can exercise jurisdiction under Section 438 of CrPC in the cases where the Court comes to the conclusion that the allegations levelled by the prosecutrix against an accused are *prima facie* false and

baseless. 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** and **Prathvi Raj Chauhan Vs. Union of India & ors** reported in **(2020) 4 SCC 727**.

6. The prosecutrix is present in person through virtual mode pursuant to notice issued to her under Section 15A (3) of the Act of 1989. The prosecutrix on being asked about her say on the appeal and relief of grant of anticipatory bail to appellant, has stated that she has no objection. In view of the provisions under Section 18 of the Act of 1989 this Court put specific query whether the incident took place or not, to which she denied.
7. I have heard learned counsel for the parties.
8. So far as the objection raised by the learned State Counsel with regard to maintainability of anticipatory bail application is concerned, it is true that when the offence under the provisions of the Act of 1989 is registered against an accused, then application for grant of anticipatory bail is not maintainable in view of specific bar under Section 18 of the Act of 1989. But at the same time if the accused is able to satisfy the Court that the allegations levelled against him are false and baseless, then the absolute bar contained under Section 18 of the Act of 1989 will not apply and the Court can consider the case for grant of anticipatory bail under Section 438 of CrPC on merits. Hon'ble Supreme Court in case of Prathvi Raj Chouhan (supra) considering its earlier judgment in case of Dr. Subhash Kashinath (supra) has observed as under:-

“32.As far as the provision of Section 18-A and anticipatory bail is concerned, the judgment of Mishra, J has stated that in cases where no *prima facie* materials exist warranting arrest in a complaint, the court has the inherent power to direct a pre-arrest bail.”

In the case at hand, as the prosecutrix, who is present in person through virtual mode, has made her statement and denied the incident, therefore, in the light of law laid down by Hon'ble Supreme Court in case of Prathvi Raj Chouhan (supra), I am of the view that this application for grant of anticipatory bail can be considered.

9. Taking into consideration the facts and circumstances of case, in particularly the submission made by the prosecutrix, I am inclined to grant anticipatory bail to the appellant.
10. 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/- 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

roshan/-