

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
CRA No. 694 of 2021

G. Shrinivas S/o G.V.R. Sharma, Aged About 62 Years, R/o -Kondapur, Hyderabad (Andra Pradesh).

---- appellant

Versus

State of Chhattisgarh Through The Police Station Adim Jati Kalyan Thana Jagdalpur, District -Bastar, Chhattisgarh.

---- Respondent

For appellant	:	Mr. Anil Gulati, Advocate on behalf of Mr P.K. Tulsian, Advocate.
For Respondent-State	:	Mr. Vimlesh Bajpai, GA.

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

04/08/2021

1. This criminal appeal under Section 14-A (ii) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for short, 'the Act of 1989') is filed by appellant against the order dated 18.06.2021 passed by learned Special Judge (SC & SC Act), Jagdalpur, Distt -Bastar (CG) rejecting application of appellant filed under Section 438 of Cr.P.C on the ground that anticipatory bail application is not maintainable in view of statutory bar under Section 18 of the Act, 1989.
2. Appellant is apprehending his arrest in connection with Crime No.276/2019 registered at Police Station – Adim Jati Kalyan Thana Jagdalpur, Distt Bastar, (CG), for the offence punishable under Sections 120 (B), 420, 294, 506 of the Indian Penal Code and Sections 3(1) (r), 3 (1) (s) of the Act of 1989.
3. Case of the prosecution, in brief, is that complainant has applied for loan in KCC and ATL Limits under the scheme of ADB from State Bank of India, Dharampura Branch, Jagdalpur for the purpose of fencing of 1.740 hectare (4.35 acre) area of land by barbed wire and for laying down of pipeline for Drip Irrigation System. At the time of sanction of loan, Imtiaz

Khan was posted as Field Officer, Prakash Joshi as Cashier, A Chandrashaker Rao as Manager and present appellant as Supervising Officer (प्रवेक्षण अधिकारी). In the month of November 2009, complainant withdrew sum of Rs.1,50,000/- but out of said amount Cashier of the Bank has made payment of only Rs.50,000/- to him and remaining amount of Rs.1,00,000/- has been paid to one Ballu Chawda alias Balram Chawda. The work of barbed wire fencing and laying down of pipeline for drip irrigation system has been done only in an area of 1.35 acre of land but the entire loan amount for the work to be done in 4.35 acre land has been released on the basis of work completion certificate issued by the Agriculture Extension Development Officers Shri Rupendra Tiwari and Shri R.K. Mishra. On 16.05.2019, complainant has submitted written complaint before the Superintendent of Police which was forwarded to the concerned Police Station, and based upon which, instant crime is registered against Ballu alias Balram Chawda, Raghunath Sethiya, Rupendra Choudhary, Radha Krishna Mishra, Imtiaz Khan, Prakash Joshi and A. Chandrashekhar Rao. Name of present appellant has come in the statement of one Shivram Baghel, who was working as Relationship Manager in the Bank at the relevant point of time.

4. Learned counsel for the appellant submits that appellant was not named in FIR nor in written complaint, but his name was taken by one of the employees of Bank who in his statement has stated that at the time of alleged dispute, present appellant was posted as Supervising Officer in the Bank and now he is retired from his services. In the year 2009, loan was sanctioned to complainant and amount was withdrawn by him from time to time. The work completion certificate was also submitted before

the Bank. He submits that in same crime number while considering anticipatory bail application of co-accused A. Chandrashekhar Rao registered as CRA No.923/2021, this Court has considered the pleadings and documents placed therein with regard to the fact that complaint has been lodged only when the Bank initiated proceedings under Section 138 of the Negotiable Instruments Act, 1881 against the complainant. In the said proceedings, charge under Section 138 of the Act of 1881 has been framed against complaint on 14.01.2019. It is further pointed out that the Court below without considering the fact that complainant in his written complaint has not named present appellant making allegation of commission of crime under the Act of 1989 or any other crime, dismissed application of appellant filed under Section 438 of Cr.P.C, taking note of the provisions of Section 18 of the Act of 1989. The learned Court below erred in rejecting bail application to be not maintainable in view of the provisions of Section 18 of the Act of 1989. Even otherwise, when allegation has been levelled on the false pretext, the High Court can consider application for grant of anticipatory bail in view of decision of Hon'ble Supreme Court in case of **Prathvi Raj Chauhan vs Union of India & Ors** reported in **(2020) 4 SCC 727**. Since allegation of offence under the Act of 1989 is false and baseless, appellant may be extended benefit under Section 438 of Cr.P.C.

5. Learned State Counsel opposes the submissions made by learned counsel for the appellant and submits that Shivram Baghel posted as Relationship Manager in the bank has disclosed name of present appellant. He specifically mentioned in his statement that at relevant point of time, appellant was working as Supervising Officer. Hence, there is prima facie involvement of present appellant in instant crime. As per

material available in case diary, in the month of May, 2015, Bank has issued notice for recovery of loan. As complainant belongs to Scheduled Tribes community, offences under the Act of 1989 were also registered. Hence, learned Court below was justified in rejecting bail application to be not maintainable under the provisions of Section 18 of the Act of 1998.

6. However, upon putting a specific question to learned State Counsel with regard to contents of complaint, he read over it and submits that name of present appellant does not find place in written complaint nor there is any allegation regarding commission of crime under the Act of 1989.
7. Complainant is present in person through Video Conferencing from District Court, Jagdalpur. He submits that he is a poor agriculturist, he has applied for loan under the Scheme of ADB from SBI for fencing and laying down of pipeline for drip irrigation system in his 4.35 acres of land but work has been done only in 1.35 acre of land and entire amount of loan sanctioned for the whole work was withdrawn, thereby he was cheated. He accepts that even after his request on many occasions Bank Officer did not intimate him about the loan amount sanctioned. He was also sent to jail in connection with the proceedings drawn by the Bank. Hence, he has filed the complaint against the persons named therein.
8. Heard learned counsel for the parties.
9. The written complaint read over by learned State Counsel and his submissions would show that name of present appellant is not mentioned in written complaint. Specific allegations have been levelled against Ballu Chawda alias Balram Chawda that he has taken money immediately after withdrawal from the bank, the work of fencing through barbed wire and laying of pipeline was done only in an area of 1.35 acre of land, whereas entire loan amount has been withdrawn on the basis of work completion

certificate issued by the officers of Horticulture Department.

10. So far as the submissions made by learned State Counsel that application for grant of anticipatory bail is not maintainable in view of bar contained in Section 18 of the Act of 1989 is concerned, there is no dispute on the legal issue with regard to applicability of Section 18 of the Act of 1989. However, the Hon'ble Supreme Court in cases of **Prathvi Raj** (supra) and **Dr. Subhash Kashinath Mahajan vs. State of Maharashtra & Anr** reported in **(2018) 6 SCC 454**, has held that the bar is not absolute and in exceptional case considering the facts of case, the High Court can consider application for grant of anticipatory bail.
11. Considering the entire facts and circumstances of the case, nature of allegations, entirety of the facts, material available in the case dairy, particularly the fact that appellant has not been named in written complaint or FIR registered by the Police, I am of the view that application filed under Section 438 of Cr.P.C is maintainable.
12. Accordingly, appeal is allowed and it is directed that in the event of arrest of appellant in connection with the crime in question, he shall be released on bail by the Officer arresting him on his executing a personal bond in sum of Rs.25,000/- with one local surety in the like sum to the satisfaction of the concerned Arresting Officer. Appellant shall also abide by the following conditions :
 - (i) that the appellant shall make himself 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

Jamal/-