

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**CRA No. 785 of 2021**

- Naveen Keshri @ Bappi S/o late Purushottam Das Gupta, aged about 30 years, Occu. Business R/o Mohala Snagam Chowk, P.S. & Tahsil Ambikapur District Surguja Chhattisgarh

-----Appellant**VERSUS**

- State of Chhattisgarh through: SHO, Police Station Ambikapur (AJAK), District Surguja, Chhattisgarh

-----Non-applicant

For Appellant	: Mr. Shakti Raj Sinha, Adv.
For Non-applicant- State	: Mr. Vimlesh Bajpai, Govt. Adv.

*(proceedings through video conferencing)***Hon'ble Shri Parth Prateem Sahu, Judge****ORDER****24/08/2021**

1. This appeal arises out of rejection of application filed under Section 438 of CrPC filed in connection with crime bearing no. 17/2021, registered at Police Station- AJAK, Ambikapur, District Surguja, Chhattisgarh, for offence defined under Sections 376(2)(n) of IPC and Section 3(2)(v) of SC/ST (Prevention of Atrocities) Act, 1989 (for short "Act of 1989").
2. Appellant apprehending his arrest in crime no. 17/2021, had filed an application under Section 438 of CrPC before the Special Judge (SC/ST Prevention of Atrocities) Act, Ambikapur, District Surguja, Chhattisgarh, which was dismissed by impugned order dated 22.07.2021.
3. As per the case of prosecution, prosecutrix came at Ambikapur in search of employment where she started working in a garment shop

of appellant. They have developed love affair and also established physical relationship. Whenever appellant visited Bilaspur for purchase of goods, he also brought the prosecutrix along with him, stayed in hotels where also appellant used to make physical relationship with her. When the prosecutrix refused his request of making intercourse, appellant stated her that he would marry her and on several occasions appellant visited her residential place and established physical relationship due to which she became pregnant in the year 2018 upon which appellant forcefully administered some medication to prosecutrix, aborting her pregnancy. In the year 2019 also she conceived pregnancy upon which appellant again forcefully administered her some medicine due to which her pregnancy was again aborted. Prosecutrix left the job and also shifted her place of resident but there also appellant visited her and established physical relationship forcefully on 10.02.2021 and thereafter after 10-12 days he again threatened her, established physical relationship. Under the fear she has not complaint to anyone. Written report was lodged on 18.06.2021 based upon which FIR was registered against the appellant.

4. Mr. Shakti Raj Sinha, learned counsel for the appellant submits that appellant has not committed any offence as alleged against him. Prosecutrix being a major girl herself fell in love with appellant. She with her own free will has established physical relationship with the appellant, hence, offence as alleged against him would not be made out. It is further argued that the learned Court below dismissed the application for grant of anticipatory bail on the ground that the application for grant of anticipatory bail is not maintainable in view of the bar under Section 18 of the Act of 1989, which is not sustainable.

He submits that there is no allegation that the act of the appellant is only because she belongs to a particular caste, in fact there was love affair between the two since 2017, hence, offence under the Act of 1989 as registered against the appellant is not attracted.

5. On the other hand, Mr. Vimlesh Bajpai, learned State counsel opposes the submissions made by learned counsel for the appellant and submits that the prosecutrix belongs to ST community and learned Court below justified in dismissing the application for grant of anticipatory bail to be not maintainable in view of specific bar under S.18 of the Act of 1989. On merits he submits that the appellant established physical relationship with the prosecutrix on the false pretext of marriage, hence, prima facie, the appellant has committed offence as alleged against him. He read-over the written report lodged by the prosecutrix in support of his contention.
6. I have heard learned counsel for the respective parties and also perused the case diary.
7. So far as, the issue with regard to the maintainability of anticipatory bail application is concerned, perusal of written report would show that there is no allegation that the appellant established physical relationship with prosecutrix only because she belongs to a particular community. In fact, in the written report it is mentioned that while working in the shop of appellant, prosecutrix and the appellant fell in love affair and due to which they established physical relationship.
8. Hon'ble Supreme Court in case of **Dinesh alias Buddha v. State of Rajasthan, (2006) 3 SCC 771**, while dealing with Section 3(2)(v) of the Act of 1989 has held thus:

“15. Sine qua non for application of

Section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of Scheduled Castes and Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not case of the prosecution that the rape was committed on the victim since she was a member of Scheduled Caste. In the absence of evidence to that effect, Section 3(2)(v) has no application. Had Section 3(2)(v) of the Atrocities Act been applicable then by operation of law, the sentence would have been imprisonment for life and fine.”

9. In the aforementioned rulings Hon'ble Supreme Court has held that for attracting Section 3(2)(v) of the Act, it is sine qua non that the offence must have been committed against the person on the ground that such person is a member of Scheduled Caste and Scheduled Tribe.
10. Recently, Hon'ble Supreme Court in the case of **Khuman Singh v. State of Madhyapradesh, AIR 2019 SC 4030** while relying upon the judgment of **Dinesh alias Buddha (supra)** has considered the sustainability of conviction under Section 3(2)(v) of the Act along with conviction of Section 302 IPC has held thus:

“11. The next question falling for consideration is whether the conviction under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act can be sustained? Deceased belongs to “Khangar” Caste and in a wordy altercation, appellant-accused is said to have called the deceased by his caste name “Khangar” and attacked him with an axe. Calling of the deceased by his Caste name is admittedly in the field when there was a sudden quarrel regarding grazing of the buffaloes.

12. From the evidence and other materials on record, there is nothing to suggest that the offence was committed by the

appellant only because the deceased belonged to a Scheduled Caste. Both the trial court and the High Court recorded the finding that the appellant-accused scolded the deceased Veer Singh that he belongs to “Khangar” Caste and how he could drive away the cattle of the person belonging to “Thakur” Caste and therefore, the appellant-accused has committed the offence under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Section 3 of the said Act deals with the punishments for offences of atrocities committed under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Section 3(2)(v) of the Act reads as under:-

“Section 3 – Punishments for offences of atrocities –

(1)

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,

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.....

(v) commits any offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine”.

The object of Section 3(2)(v) of the Act is to provide for enhanced punishment with regard to the offences under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property knowing that the victim is a member of a Scheduled Caste or a Scheduled Tribe.

13. In *Dinesh alias Buddha v. State of Rajasthan* (2006) 3 SCC 771, the Supreme Court held as under:-

“15. ...As held by the Supreme Court, the offence must be such so as to attract the offence under Section 3(2)(v) of the Act. The offence must have been committed against the person on the ground that such person is a member of Scheduled Caste and Scheduled Tribe. In the present case, the fact that the

deceased was belonging to “Khangar”- Scheduled Caste is not disputed. There is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore, the conviction of the appellant-accused under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not sustainable.”

11. Hon'ble Supreme Court in the aforementioned rulings has held that to attract the offence under Section 3(2)(v) of the Act, offence must have been committed against the person on the ground that such person is a member of SC/ST.
12. In the case at hand, there is no allegation against the appellant that the appellant has established physical relationship with the complainant on the ground that she is a member of Scheduled Tribe community. She on more than one occasion visited Bilaspur from Ambikapur along with appellant and stayed in hotels where also they have established their physical relationship. Prosecutrix conceived pregnancy in the year 2018 and 2019 but has not complaint to anyone or any authority. I have also perused the statement of prosecutrix recorded under Section 161 and 164 of CrPC. In fact, the complainant in the F.I.R. has stated that they have developed love affair in the year 2017, thereafter, indulged in making physical relationship. Hon'ble Supreme Court in the case of ***Prathvi Raj Chauhan v. Union of India and others*** reported in **(2020) 4 SCC 727** has held that the anticipatory bail application can be considered by High Court in exceptional circumstances. Taking support of the aforementioned ruling of Supreme Court, I am of the view that the application for grant of anticipatory bail can be considered.
13. For the foregoing reasons, the impugned order passed by Court

below is not sustainable and it is hereby set aside.

14. Without commenting anything on merits of the case, I am inclined to allow the appeal. Accordingly, appeal is allowed and it is directed that in the event of arrest of appellant in connection with the crime in question (17/2021), he shall be released on anticipatory bail by the Officer arresting him on his executing a personal bond in the sum of Rs. 25,000/- with 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 available for interrogation before the Investigation 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