

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
CRA No. 810 of 2021

Rakesh Pandey S/o Onkar Pandey, Aged About 45 Years, Occupation
 -Teacher, R/o- Mahalpara, Baikunthpur, District -Korea, Chhattisgarh.

---- Appellant

Versus

State of Chhattisgarh Through The Station House Officer, Police Station
 -AJAK, Baikunthpur, District -Korea, Chhattisgarh.

--- Respondent

For Appellant	: Mr. Rahul Mishra, Advocate.
For Respondent-State	: Mr. B.P. Banjare, Dy. GA.

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

03/09/2021

Heard.

1. Notice send to complainant/victim was served. On 27.08.2021, he appeared before this Court and objected to grant of anticipatory bail to appellant. His objection was recorded in order sheet. As on that date, case diary was not available, case was fixed for 03.09.2021. Today, when the matter is taken up for hearing, complainant is not present before this Court.
2. This criminal appeal filed under Section 14-A(ii) of Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for short, 'Act of 1989') against order dated 27.07.2021 passed by learned Special Judge (SC/ST Act) Baikunthpur, District -Korea, (CG) whereby appellants' application filed under Section 438 of Cr.P.C was dismissed.
3. Appellant is apprehending his arrest in connection with Crime No.15/2021 registered at Police Station –AJAK Baikunthpur, District -Korea, (CG), for the offence punishable under Sections 294 & 506 of the Indian Penal Code and Section 3(2)(v-a) of the Act of 1989.

4. Case of the prosecution, in brief, is that on 27.06.2021 at about 5:00 pm complainant was standing in-front of shop of one Rajeshwar Sahu and talking with other persons at that time appellant came there and started abusing him in filthy language, also threatened him of his life. He also stated that if he can get Sarpanch elected he can also get him removed from the said post. Based upon complaint, instant crime is registered against appellant.
5. Learned counsel for the appellant submits that complainant is an elected Sarpanch of Gram Panchayat -Khanda. Villagers of Khanda have lodged a complaint against complainant and Secretary of Gram Panchayat with regard to irregularities committed by them, which is pending consideration before the Competent Authority, as is appearing from order dated 24.08.2021 passed by the Chief Executive Officer, Jila Panchayat, Korea, copy of which is filed along-with covering memo. He further submits that there is no allegation against appellant in FIR that he has abused and threatened complainant only because he belongs to a particular caste. Hence, offence under Section 3(2)(v-a) of the Act of 1989, will not be attracted. Except offence under the Act of 1989 other offences registered against appellant are bailable. Looking to the facts and circumstances of this case, appellant may be enlarged on anticipatory bail as he is a Government servant.
6. Learned State Counsel opposes the submissions made by learned counsel for appellant and submits that in FIR there are allegations of abusing complainant in filthy language and threatened him. In FIR complainant has shown himself to be member of Scheduled Tribes community, hence, appellant has committed offence as alleged against him, therefore, in view of provision under Section 18 of the Act of 1989,

this anticipatory bail application is not maintainable.

7. Heard learned counsel for the parties.

8. It is not in dispute that as per allegation, appellant has used filthy language and threatened complainant for his life, but it is not allegation as appearing in FIR also that appellant has abused and threatened complainant only because he belongs to a particular caste. Hon'ble Supreme Court while considering applicability of Section 3(2)(v-a) of the Act of 1989 (old provision) in case of **Khuman Singh vs. State of Madhya Pradesh** reported in **AIR (2019) SC 4030** has held as under :-

“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 Schedule Tribe....

(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. 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) of the Atrocities Act been applicable then by operation of law, the sentence would have been imprisonment for life and fine.

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.

9. In the aforecited judgment Hon'ble Supreme Court has considered its earlier judgment in case of **Dinesh @ Buddha vs. State of Rajasthan** reported in **(2006) 3 SCC 771** wherein it has been held that for attracting the provisions of Section 3(2)(v-a) of the Act of 1989, there must be specific allegation in respect of commission of offence specified under Schedule punishable under Indian Penal Code on the ground that

complainant belongs to reserved category.

10. Considering the entire facts and circumstances of the case, nature of allegation, aforementioned dictum of Hon'ble Supreme Court, I am of the view that bail application of appellant filed under Section 438 of Cr.P.C can be considered. Accordingly, impugned order passed by Court below is set aside. For the foregoing reasons, I am inclined to grant anticipatory bail to appellant.

11. Accordingly, appeal is allowed and it is directed that in the event of arrest of appellant in connection with 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 surety in the like sum to the satisfaction of the concerned Arresting Officer. Appellant shall also abide by the following conditions :

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