

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
CRA No. 945 of 2021

1. Dushyant Kumar Tiwari S/o Kedarnath Tiwari, Aged About 55 Years, R/o Kosabadi, Police Station Kotwali, Korba District Korba Chhattisgarh.
2. Ranu Nayak S/o Rajkishore Nayak, Aged About 41 Years, R/o Lanco Colony, Village Patadhi Police Station Urga, District Korba Chhattisgarh.

---- Appellants

Versus

1. State of Chhattisgarh Through The Station House Officer, Police Station Urga, District Korba Chhattisgarh.
2. XYZ W/o ABC.

--- Respondents

For Appellants	:	Mr. Dharmesh Shrivastava, Advocate.
For Respondent-State	:	Mr. Vimlesh Bajpai, GA.
Complainant is present in person.		

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

01/10/2021

Heard.

1. This criminal appeal under Section 14A of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for short, 'Act of 1989') is filed against order dated 24.08.21 passed by learned Special Judge SC/ST (Prevention of Atrocities) Act, Korba, District -Korba, (CG) whereby appellants' application filed under Section 438 of Cr.P.C for grant of anticipatory bail is rejected.
2. Appellants are apprehending their arrest in connection with Crime No. 355/2021 registered at Police Station –Urga, District -Korba, (CG), for the offence punishable under Sections 354, 34 of the Indian Penal Code and Section 3(2)(v) of the Act of 1989.
3. Case of the prosecution, in brief, is that on 11.08.21 written complaint was lodged by complainant mentioning therein that upon acquisition of land, she was provided job in “Lanco Amarkantak Power Limited Company (LANCO)” on the post of "Helper". She was appointed after verification of all her documents. For last one year, defects in one or

other documents of her is being pointed out stating that her documents are not complete and salary of one month is stopped. When she visited office for getting details, H.R. Manager (Ranu Naik) talked with her in vulgar language and pressurized her. On 05.08.21, when she again visited office of H.R. Manager, at that time, appellants were present there to whom she asked for reinstatement of her service, upon which they demanded sexual favour from her. Thereafter, applicant No.2 caught hold of her hand, whereupon she started weeping. Appellants were continuously laughing and saying that if she will not pay any attention to them, how they can pay attention upon her. Complainant returned to her house and narrated the incident to her son. Thereafter, report was lodged, based upon which aforementioned crime is registered against appellants.

4. Learned counsel for appellants submits that allegations levelled against appellants are absolutely false and baseless. Complainant was appointed as Helper in LANCO company. In view of letter received from the office of Collector KYC of all the employees are required to be updated, so that they can file On-line monthly return and benefits can be deposited in their account directly. Upon scrutiny of documents, some defect has been noticed in documents of about 14 employees including complainant herein and accordingly they were noticed on 08.01.19. Thereafter notices have been issued continuously upto 02.07.21, which are placed on record as Annexure A-6. Notice dated 02.07.21 was issued to three persons including complainant calling upon them to come along-with necessary documents for updation of KYC, which is mandatory in order to get benefits from Employees Provident Fund Organization, as others have submitted the relevant documents and their KYC was updated. At

the time of securing appointment, complainant has submitted marksheet of middle school in which her Date of Birth is shown as '01.07.1974' whereas in Aadhaar Card it is shown as '07.02.1978'. As details of complainant from date of his employment is feeded in all the documents and available with other statutory authorities DOB as 07.01.74 her KYC could not be accepted and was rejected to be invalid on ground of DOB. Copy of non-acceptance of details of complainant on 8th July 2021 is placed on record at Page No.54. This was the reason, complainant was being asked to complete the formalities and documents for updating KYC. It is not that any action is taken against complainant only but as many as 13 other employees have been issued notice for completing the documents and formalities. The police has collected CCTV footage, visitors entry register of administration building of Company. CCTV footage does not reflect presence of complainant in office on alleged date ie on 05.08.21 nor there is signature of complainant in the visitors register which shows that allegations levelled against appellants are false and frivolous. Copy of register and CD of CCTV footage is filed as Annexure A-3. Even in report, allegation of harassment since last one year is with regard to some error in documents of complainant. Allegation of offence under Section 354 of IPC is levelled only to pressurize the appellants. Earlier also, complaint was filed by complainant before the Administration of LANCO company of misbehaviour with her, upon enquiry of complaint allegation levelled by complainant herein against Department Head was found to be false, copy of which is placed on record as Annexure P-9. Appellants have not committed any offence as alleged against them and have been falsely implicated in instant crime. Learned Court below dismissed bail application for grant of anticipatory

bail of appellants observing that in view bar under Section 18 of the Act of 1989 anticipatory bail application is not maintainable. In complaint/FIR there is no allegation that any offence is committed against her only because she belongs to reserved category/class. Hence, no offence would be made out under the Act of 1989 and bar under Section 18 of the Act of 1989 is not attracted.

5. Learned State Counsel opposes the submissions made by learned counsel for the appellants and submits that commission of offence under Section 354 of IPC has been levelled in complaint against appellants. In complaint there is mention that complainant was being harassed for last one year pointing out some error in documents of complainant, when she visited HR office of the Company, appellants have talked using vulgar words and also tried to outrage her modesty. Complainant has submitted three different copies of three different Aadhaar Card, in which one Aadhaar Card showing her DOB as 10.10.75, another as 07.02.78 and 3rd one as 01.07.74. Upon putting specific query to learned State Counsel with regard to what is the date of issuance/correction in Aadhaar Card in respect to the DOB, upon going through case diary he submits that photocopy of acknowledgment of consent for update of details of Aadhaar Card was dated 03.08.2021. In complaint or FIR there is no allegation that alleged offence is being committed upon complainant only on the ground that she belongs to 'reserved category'.
6. Complainant present before the Court, reiterated the allegation of complaint and further stated that CCTV camera of company on many occasions does not work, hence there may not be her picture on the said date.
7. Heard learned counsel for the parties and perused the case diary.

8. So far as for maintainability of bail application is concerned, in complaint or in the statement there is no allegation that appellants have committed any alleged offence because complainant belongs to 'reserved category'. Hon'ble Supreme Court in case of **Dinesh alias Buddha v. State of Rajasthan (2006) 3 SCC 771**, has held that unless it is proved that any offence is committed against victim/complaint only on the ground that he/she belongs to 'reserved category' the offence under the Act of 1989 would not be made out. Hon'ble Supreme Court in case of **Prathvi Raj Chauhan vs. Union of India and Ors** reported in **(2020) 4 SCC 727** has held that application for grant of anticipatory bail in respect of offences under the Act of 1989 can be considered by the High Court in exceptional cases/circumstances where the appellant can made out a case of false implication.
9. The allegation of harassment and alleged commission of offence under Section 354 of IPC as appearing from complaint is that the employer was demanding documents to update KYC. It is not only from the complainant but from 14 employees. After few notice out of 14 employees served with notice only 3 remained till 01.07.21 and they were again noticed on 02.07.21 as reflecting from documents. The submission that on the alleged date of incident on 05.08.21 visit of complainant is not appearing from visitors register is not specifically denied but stated that on many occasions the CCTV camera are not working properly.
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 appellants filed under Section 438 of Cr.P.C can be considered. Impugned order passed by Court below is liable to be set aside and appellants are entitled for grant of anticipatory bail.

11. Accordingly, impugned order passed by Court below is set aside. Appeal is allowed and it is directed that in the event of arrest of appellants in connection with crime in question, they shall be released on bail by the Officer Arresting them on their executing a personal bond in sum of Rs.1,00,000/- with one surety each in the like sum to the satisfaction of the concerned Arresting Officer. Appellants shall also abide by the following conditions :

- (i) that appellants shall make themselves for interrogation before the investigating officer as and when required;
- (ii) that appellants 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 appellants shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that appellants shall appear before the trial Court on each and every date given to them by the said Court till disposal of the trial.

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-