

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 827 of 2020**

- Jitendra Gupta, S/o Vijay Gupta, Aged About 36 Years R/o Village Katima, Police Station Kusmi, District Balrampur - Ramanujganj Chhattisgarh.

---- Appellant**Versus**

- State Of Chhattisgarh, Through - Police Station Kusmi, District Balrampur - Ramanujganj Chhattisgarh.

---- Respondent

For Appellant	:-	Mr. Manoj Paranjpe, Advocate
For Respondent-State	:-	Mr. Ayaz Naved, G.A.
For Complainant	:-	Mr. Jitendra Shrivastava, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Judgment On Board**04/02/2021**

1. Heard.
2. The appellant has preferred this appeal against the impugned order dated 18.6.2020 passed by Special Judge (Atrocities), Ramanujganj District Balrampur by which the application filed by the appellant for grant of anticipatory bail has been rejected.
3. The appellant apprehends his arrest in connection with Crime No.59/2020 (as per rejection order) registered at Police Station Kusmi, District Balrampur- Ramanujganj, C.G.

for the offence punishable under Section 354 of the IPC and Section 3(2)(v)(क) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for brevity 'the Act, 1989').

4. Appellant has allegedly used criminal force with an intent to outrage the modesty of the complainant, who belongs to the Scheduled Tribe community and is the Sarpanch of Janpad Panchayat, Sonpur, Gram Kusmi.
5. It is argued that appellant's wife is a member of the Block Development Council, Janpad Panchayat, Kusmi and has lodged a complaint against the Sarpanch on 18.03.2020 vide Annexure A/3, therefore, as a counter-blast, the present false FIR has been lodged. It is also argued that appellant is a Government Servant working as a Teacher in the primary school and there being no necessity of his custodial interrogation, he may be released on bail.
6. Learned State counsel and learned counsel for the complainant would oppose the prayer for grant of bail with specific reference to Section 18 of the Act, 1989. According to them, considering the nature of allegations, the appellant is not entitled to be released on anticipatory bail.
7. Having heard learned counsel for the parties and on perusal of the material available on record, it appears but for the allegation of catching hold of her hand requesting her to board the appellant's car, there is no other incident of

outraging the modesty.

8. There is no allegation that the appellant used to flirt with the complainant or had an eye over her for sometime. The present incident is one single isolated incident between two members of the same village, who are prominently placed at that level of their society. They are known to each other and there is previous history of appellant's wife lodging a complaint against the present complainant, therefore, the possibility of false implication cannot be ruled out.
9. True it is that, there is bar for exercising power under Section 438 Cr.P.C. in case where allegation constituting offence under the Act, 1989 are there, however, when the very foundation of the case is weak on account of previous dispute/ enmity between the parties and more so, when the same is of political nature, this Court would always step in to protect the accused, who may eventually be harmed, if the offence is not proved.
10. On perusal of the material available in the case diary, it appears, while considering the prayer for grant of bail, the Court below has committed serious error of jurisdiction, inasmuch as, it should have objectively considered the said prayer by having a close look on the material against the accused. While exercising judicial discretion for grant of bail, the trial Court is not expected to conduct an exercise in formality but the same should reflect from the material and

further, cogent reasons must be assigned while rejecting the bail application.

11. Considering the genesis of the offence and there being lack of ingredients constituting offence under the Atrocities Act in the FIR, the appeal is **allowed**, impugned order is set-aside and I am inclined to use power under Section 438 of the Cr.P.C. and release the appellant on anticipatory bail.

12. Accordingly, the appellant is directed to be released on anticipatory bail on furnishing a personal bond for a sum of Rs.50,000/- with one surety in the like sum to the satisfaction of the Arresting Officer with the following conditions:

- (i) he shall make himself available for interrogation by a police officer as and when required;
- (ii) he 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 from disclosing such facts to the Court or to any police officer.
- (iii) he shall not influence the witnesses during pendency of the trial.

Certified copy as per rules.

SD/-
(Prashant Kumar Mishra)
Judge

Ayushi