

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 812 of 2020

1. Krishna Yadav S/o Shekhar Prasad Yadav, Aged About 24 Years R/o House No. 402, Kachhar, Post Ludeg, Tahsil Patthalgaon, District Jashpur Chhattisgarh, District : Jashpur, Chhattisgarh
2. Manorama Yadav W/o Shekhar Prasad Yadav, Aged About 40 Years R/o House No. 402, Kachhar, Post Ludeg, Tahsil Patthalgaon, District Jashpur Chhattisgarh, District : Jashpur, Chhattisgarh

---- Appellants

Versus

State Of Chhattisgarh Through Station House Officer, P.S. Patthalgaon, District Jashpur Chhattisgarh, District : Jashpur, Chhattisgarh

---- Respondent

For Appellants	:	Shri CJK Rao, Advocate
For State	:	Shri Mateen Siddiqui, Dy. A.G.

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

05/02/2021

Heard.

1. This appeal is directed against order dated 6.8.2020 passed by learned Additional Sessions Judge (FTC) Jashpur (CG), whereby appellants' application for grant of anticipatory bail has been rejected.
2. The appellants are apprehending their arrest in connection with Crime No. 145 of 2020 registered in Police Station -Patthalgaon, District-Jashpur (CG), for alleged commission of offence under Sections 294, 506, 323, 147 IPC and Sections 3 (1) (द) and 3 (2) (वक) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
3. Case of the prosecution, in brief, is that the complainant lodged report in

the police station alleging that when they were passing through the road, they were obstructed and stopped by the appellants, threatened, abused and assaulted. Learned Court below found that as the complainant belongs to Scheduled Tribe category, the appellants are not entitled to grant of anticipatory bail.

4. Learned counsel for the appellants would argue that in the present case, appellants are alleged to have committed offence under Sections 294, 506, 323, 147 IPC which are all bailable in nature, but only in order to somehow harass the appellants, without any material, offence under Sections 3 (1) (द) [3 (1) (r)] and 3 (2) (वक) [3 (2) (va)] of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "*the Act*") have been registered against the appellants. He would argue that even if the entire allegations and the background of dispute as stated in the FIR is taken on its face value, neither offence under Section 3 (1) (r) of the Act is made out nor Section 3 (2) (va) of the Act is made out. Learned counsel for the appellants further contended that the sum total of allegation is that when the victim were going on the road, they were intercepted and it is alleged that they were threatened, abused and assaulted by the present appellants. There is nothing in the statement that this was an act of intentional intimidation or insult with intent to humiliate the victim in any place within public view. Every insult or intimidation would not amount to commission of offence unless there is clear statement that all this was done only for the reason that the victim belonged to member of SC/ST. Therefore, it is submitted that the criminal overt act of the appellants would not come in the purview of Section 3 (1) (r) of the Act.
5. With regard to allegation of commission of offence under Section 3 (2) (va) of the Act, it has been argued that the same principle is applicable when the offence scheduled under the Act are alleged to have been committed for the reason that victim belonged to reserved category. He submits that present is a simple dispute of passing through a particular land which is being objected. The appellants first lodged FIR at 10:30 AM on 19.7.2020 against the complainants of the present case alleging that they have created obstruction on the road and are not allowing the appellants to use

the road for movement and two hours thereafter, as counter case, the complainant of the present case have lodged report. Therefore, no case of commission of offence under Section 3 (1) (r) *or* 3 (2) (va) of the Act is made out.

6. On the other hand, learned counsel for the State opposed the bail application by submitting that the present is a case where the victim were known to the appellants as members of the Scheduled Tribe and even then, the appellants obstructed them, abused, intercepted and intimidated. Therefore, there is prima facie material to presume that all this was done intentionally to humiliate them in a place within public view and once a prima facie case is made out, bar under Section 18 of the Act would come into play and the appellants' anticipatory bail application would not be maintainable. Therefore, it is submitted, the Court below has not committed any illegality.
7. In a recent judicial pronouncement in the case of **Prathvi Raj Chauhan Vs. Union of India & Ors.** (2020) 4 SCC 727, the Hon'ble Supreme Court had occasion to consider maintainability of application under Section 438 Cr.P.C and it was held as below:-

“11. Concerning the applicability of provisions of section 438 Cr.PC, it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A (i) shall not apply. We have clarified this aspect while deciding the review petitions.

x x x

x x x

33. I would only add a caveat with the observation and emphasize that while considering any application seeking pre-arrest bail, the High Court has to balance the two interests: i.e. that the power is not so used as to convert the jurisdiction into that under Section 438 of the Criminal Procedure Code, but that it is used

sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR, and further also that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. I consider such stringent terms, otherwise contrary to the philosophy of bail, absolutely essential, because a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament."

8. Therefore, in appropriate cases of exceptional nature, where prima facie case is not made out even upon bare reading of the complaint/FIR on its face value, benefit of anticipatory bail could be admitted notwithstanding bar under Section 18 of the Act.
9. If the FIR lodged against the present appellants is read as it is, without adding or subtracting anything, the only allegation made therein is that when the victims were passing through the road, the appellants came in, intercepted, abused, threatened and assaulted. In the entire FIR, it has not been stated that all this was done with intention to humiliate the victim for the reason that they belonged to Scheduled Tribe. Whether or not there was intention has to be prima facie gathered from the criminal overt act and utterances or appreciating the incident in a particular background as stated in FIR and complaint. In the present case, the complainant have not come out with any particular background that the object behind obstructing and assaulting and also giving threat was intended to humiliate the victim because they belonged to reserved category.

Similarly, this Court also finds that though there are allegation of commission of offences under Sections 294, 506, 323 and 147 IPC which are bailable offences, it is difficult to prima facie hold that either threat or assault was only for the reason that the victim belonged to ST category.

10. The provision contained under Section 3 (2) (v) of the Act had come up for consideration in interpretation of the Supreme Court in the case of

Khuman Singh Vs. State of Madhya Pradesh (AIR 2019 SC 4030). In that case, assault was made on the deceased, who belonged to reserved category. While altering the conviction under Section 302 IPC to that of Section 304 Part-II IPC, conviction under Section 3 (2) (v) of the Act of 1989 was set aside on following consideration :-

“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, -

.....

(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."

11. Section 3 (2) (v) of the Act of 1989 is *pari materia* provision contained in Section 3 (2) (va) of the Act of 1989, which provides for enhanced sentence in respect of grave offence as compared to those stated in Section 3 (2) (v) of the Act. In these provisions, there is nothing to show nor any specific recital that offence would be attracted only when it is committed because the victim belonged to reserved category. However, by process of interpretation, the Supreme Court in the case of **Khuman Singh** (supra), relying upon its earlier decision in the case of **Dinesh alias Buddha Vs. State of Rajasthan** (2006) 3 SCC 771, held that offence under Section 3 (2) (v) of the Act would not be made out because there is nothing to suggest that the offence was committed only because the victim belonged to scheduled caste. This aspect has been dealt with by the Supreme Court in the case of **Dinesh** (supra). In that case, it was held that *sine qua non* for application of Section 3 (2) (v) of the Act 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 that case, it was found that there was no evidence to establish that requirement. In the absence of evidence to the effect that the rape was committed on the victim since she was a member of SC/ST, Section 3 (2) (v) of the Act was held inapplicable.

12. The aforesaid view of the Supreme Court makes out a settled legal position that even in cases where enhanced punishment is provided as contained under Section (3) (2) (va) of the Act, in order to convict a person in that provision, the prosecution is required to show that the offence was committed on the person belonging to reserved category on the ground

that the person was member of the reserved category and where there is no such material, offence under Section 3 (2) (va) of the Act cannot be said to have been prima facie made out. In other words, offence under Section 3 (2)(va) of the Act would be prima facie made out only when the allegation by the victim is that victim was assaulted, abused or threatened on the ground that he/she belonged to reserved category or the circumstances in which the incident happened, it could be prima facie gathered that the only operative reason for threat or assault was that the victim belonged to reserved category. In the present case, if the entire complaint/FIR read as it is, prima facie, it is a simple dispute between two groups. FIR lodged by the victim does not show that the operative reason for interception, threat, assault was because the victim belonged to scheduled tribe.

13. Therefore, in view of the decisions of the Supreme Court in the case of **Dinesh, Khuman Singh and Prathvi Raj Chauhan** (supra), present is a case of exceptional nature and, therefore, the appellants are entitled to benefit of anticipatory bail notwithstanding the bar created under Section 18 of the Act. There is yet another glaring feature of the case. Appellants have placed on record, a copy of FIR, which shows that the appellants' side has lodged report in the police station at 10:30 AM alleging that the other group had obstructed their way and was not allowing them to cross through and, thereafter, assaulted also. On this report, FIR has been registered against Sushila, Kiran, Devprasad and others. Thereafter, on the same day, a report has also been lodged by Devprasad (the other group) against the present appellants at 12:30.

14. In view of the above, impugned order passed by the Court below cannot be sustained and, therefore, set aside. The appeal is accordingly allowed and it is directed that in the event of arrest, the appellants shall be released on bail on each of them furnishing a personal bond in the sum of Rs.20,000/- along with one local surety for the like amount to the satisfaction of the arresting officer, with following further conditions that:-

- (i) the appellants shall make themselves available for interrogation by the police officer as and when required;

(ii) the 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 from disclosing such facts to the Court or to any police officer;

Certified copy as per rules.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen