

HIGH COURT OF CHHATTISGARH, BILASPURCRA No.806 of 2020

- Pavas Sharma, S/o Shri Tarun Kumar Sharma, Aged About 24 Years R/o E-13, Medical College, Colony, Jail Road, Raipur, District - Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through - The Station House Officer, Police Station - Gole Bazar, Raipur, District - Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Payal Kosle, D/o Shri L M Kosle, Aged About 23 Years R/o Santoshi Nagar, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

For Applicant	:	Shri Sharad Mishra, Advocate
For Respondent/State	:	Shri Pawan Kesharwani, GA
For Complainant	:	Shri Prasoon Agrawal, Advocate

Single Bench: Hon'ble Shri Justice Manindra Mohan ShrivastavaOrder On Board22/01/2021

Heard.

1. The applicant is apprehending his arrest in connection with Crime No.74/2020 registered at Police Station Gole Bazar, Raipur, District Raipur for the offence punishable under Section 294, 324, 506 of the IPC and Section 3(2) (v) of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (In short "the Act of 1989"). The applicant had applied for grant of anticipatory bail before the Court below but the Court below rejected bail application of the applicant taking into consideration the bar created under Section 18 of the Act of 1989 and opining that as the allegations against the applicant is of commission of offences not only under IPC but also under Section 3(2)(v)(a) of the Act of 1989, the application is not maintainable. Aggrieved by this rejection order, the applicant has filed this appeal.

2. Learned counsel for the applicant would argue that the learned Court below adopted erroneous approach without taking into consideration the well settled legal position as laid down by the Supreme Court that though ordinarily, there is a bar against entertaining application for grant of anticipatory bail where the accused is alleged to have committed offence under the Act of 1989, in appropriate cases when no prima facie case is made out, in exceptional cases, the benefit of anticipatory bail could be extended. Relying upon decision in the case of ***Khuman Singh vs. State of Madhya Pradesh***¹, it is argued that the said decision has settled legal position that a case under Section 3(2)(v) of the Act of 1989 would not be made out, unless it shown that the offence was committed against the person or property for the reason that the victim belonged to reserved category. According to learned counsel for the applicant, the provisions contained in Section 3(2)(v)(a) of the Act of 1989 being pari materia Section 3(2)(v) of the Act of 1989, verdict of the Supreme Court in the case of ***Khuman Singh***(supra), will squarely apply in the present case. He would further submit that even according to allegation of the prosecution, the applicant and the prosecutrix are good friend and the incident happened when the prosecutrix was going for a ride in the vehicle of the applicant and the reason for quarrel was that the accused was raising objection to the prosecutrix meeting with another lady and thereafter, when she was trying to give call to father of the applicant, the accused-applicant misbehaved with the prosecutrix. It is next submitted that if the entire story, as stated in the FIR and the case diary statement, is taken as it is, there is absolutely no element that the applicant gave assault to the prosecutrix because she belonged to the reserved category. Therefore, the registration of offence under Section 3(2)(v)(a) of the Act of 1989 is not at all made out. Hence, in these circumstances, the applicant ought to be granted the benefit of anticipatory bail.

4. On the other hand, learned counsel for the State/non-applicant would

1 2019 SCC Online SC 1104

submit that in the present case, admittedly, the prosecutrix belonged to reserved category and the applicant and the prosecutrix were friend and when they were going on for a ride in the vehicle of the applicant, the applicant fully knowing that the prosecutrix belonged to reserved category, gave her assault, resulting in injury, therefore, prima facie case under Section 3(2)(v)(a) of the Act of 1989 would definitely made out and that would bar application for grant of anticipatory bail in view of the provisions contained under Section 18 of the Act of 1989.

5. Learned counsel for the complainant would submit that as there is a compromise having taken place between the applicant and the prosecutrix, the prosecutrix would not be opposing the application for grant of anticipatory bail.

6. Having heard learned counsel for the parties, particularly taking into consideration what has stated by the prosecutrix in her written complaint on the basis of which, FIR has been lodged along with the submission made by the prosecutrix, in the considered opinion of this Court, the present is a fit case for admitting benefit of anticipatory bail to the applicant despite bar under Section 18 of the Act of 1989.

7. Section 3(2)(V)(a) of the Act of 1989 reads as under:-

3. Punishments for offences atrocities.—(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

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

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(va) commits any offence specified in the Schedule, 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 such punishment as specified under the Indian Penal Code(45 of 1860) for such offences and shall also be liable to fine;]

8. Section 3(2)(v) of the Act of 1989 is pari materia the aforesaid provision

and it provides for enhanced sentence in respect of grave offence as compared to those stated in Section 3(2)(v)(a) of the Act of 1989. In both the provisions, there is nothing to show any specific recital that the offence would be attracted only when it is committed because victim belongs to reserved category.

9. Provision contained in Section 3(2)(v)(a) of the Act of 1989 came up for consideration and interpretation of the Supreme Court in the case of ***Khuman Singh*** (supra). In that case, assault was made on the deceased, who belonged to reserved category. While altering conviction under Section 302 of IPC, to that under Section 304-II of IPC, conviction under Section 3(2)(V) of the Act of 1989 was set aside on following considerations:-

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”.

13. 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.

14. 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.

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.”

10. The aforesaid view of the Supreme Court makes settled legal position that even in cases, where enhanced punishment is provided as contained under Section 3(2)(V)(a) of the Act of 1989, in order to convict a person under 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 reserved category and where there is no such material, offence under Section 3(2)(V)(a) of the Act of 1989 could not be said to be prima facie made out. The offence under Section 3(2)(V)(a) of the Act of 1989 would be prima facie made out only when the allegation by the victim is that the victim was assaulted on the ground that victim belonged to reserved category or

where material collected during investigation prima facie shows that the victim was assaulted for the reason that he/she belonged to reserved category.

11. As stated hereinabove, there is no whisper in the written complaint or the case diary statement that the reason for which the victim was assaulted by the applicant was because of she belonging to reserved category. On the contrary, the applicant and the prosecutrix were friend and when they were going for a ride, dispute took place and the applicant assaulted the prosecutrix for the reason that she was meeting another lady as also on the ground that victim was going to inform appellant's father regarding assault. Therefore, it has to be held that the complainant does not make out a prima facie case for applicability of Section 3(2)(V)(a) of the Act of 1989 and therefore, bar created under Section 18 shall not apply. In this regard, it is useful to refer to the observations made by the Hon'ble Supreme Court in the case of **Prathvi Raj Chouhan vs. Union of India and Others**², wherein the Supreme Court had an occasion to consider the maintainability of application under Section 438 of Cr.P.C. and it was held as below:-

12. "The Court can, in exceptional cases, exercise power under Section 482 CrPC for quashing the cases to prevent misuse of provisions on settled parameters, as already observed while deciding the review petitions. The legal position is clear, and no argument to the contrary has been raised.

13. The challenge to the provisions has been rendered academic. In view of the aforesaid clarifications, we dispose of the petitions.

S. Ravindra Bhat, J. (concurring)-- I am in agreement with the judgment proposed by Arun Mishra, J. as well as its conclusions that the challenge to the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) (Amendment) Act, 2018 must fail, with the qualifications proposed in the judgment with respect to the inherent power of the court in granting anticipatory bail in cases where prima facie an offence is not made out. I would however, supplement the judgment with my opinion."

12. In view of above, this Court finds that merely because offence under Section 3(2)(V)(a) Of The Act Of 1989 was registered against the applicant, learned Court below rejected the application holding It to be not maintainable in view of the provisions contained under Section 18 of the Act of 1989, without taking into consideration the law laid down by the Supreme Court in the case of

² (2020) 4 SCC 727

Prathvi Raj Chouhan (supra). Even though, offence under the Act of 1989 is registered, where application for grant of anticipatory bail is filed, the Court is required to apply its mind to the relevant provisions of law and considerations as specified by the Supreme Court in the case of **Prathvi Raj Chouhan**(supra) and if material on record leads to satisfaction that the complaint does not make out a prima facie case, for applicability of the provisions of the Act of 1989, the bar created under Section 18 of the Act of 1989 shall not apply and in appropriate cases of exceptional nature, benefit of anticipatory bail could be admitted to the applicant. The learned Court below committed patent illegality in mechanically rejecting the bail application. Order of rejection, therefore, cannot be sustained in law, and therefore set aside.

13. Accordingly, the appeal is allowed. It is directed that in the event of arrest of the applicant in connection with the aforesaid offence, he will be released on bail by the arresting officer on his furnishing a personal bond for a sum of Rs.25,000/- with one local surety for the like amount to the satisfaction of the arresting officer with following further conditions that:

- (i) the applicant shall make himself available for interrogation by a police officer as and when required;
- (ii) the applicant 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;

Certified copy as per rules.

SD/-
(**Manindra Mohan Shrivastava**)
Judge