

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 898 of 2020

Majhar Khan S/o Mohammad Sher Khan Aged About 30 Years R/o Village- Mahora, PS- Patna, Tahsil- Baikunthpur District- Korla, Chhattisgarh.

---- Appellant

Versus

State Of Chhattisgarh Through S.H.O. P.S. Ajak, Baikunthpur District Korla Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh

---- Respondent

For Applicant	:	Shri Avinash Chand Sahu, Advocate
For State	:	Shri Mateen Siddiqui, Dy. A.G.

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

Order On Board

11/02/2021

Heard.

1. This appeal is directed against order dated 28.5.2020 passed by learned Court below whereby appellant's application for grant of anticipatory bail has been rejected.
2. The appellant is apprehending his arrest in connection with Crime No. 15 of 2020 registered in Police Station -AJAK, Baikunthpur, District- Korla (CG), for alleged commission of offence under Sections 376, 420, 506, 34 IPC and Section 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "*the Act of 1989*").
3. The prosecutrix lodged report against the appellant alleging that she belongs to scheduled tribe, the appellant committed rape on her on false pretext of marriage though the appellant was already married. The appellant only wanted to extract huge amount of money from the complainant and he extracted about Rs.20 lakh on the assurance of marriage by entering into agreement without any intention to go for marriage and later on, started

disputing, therefore, the report had to be lodged.

4. The learned Court below rejected the bail application taking into consideration that the complainant belong to scheduled tribe and there are allegations of she having been subjected to caste abuse and also threat of life and that she was subjected to rape also.
5. Learned counsel for the appellant would submit that the allegation of commission of rape is not made out in the present case because the prosecutrix is a major and a public servant working as Food Inspector and, therefore, it is highly improbable that the appellant would be in a position to cheat her and commit rape on the false pretext of marriage. He next submits that the parties had even executed an agreement for marriage on 2nd April 2019 and the prosecutrix in her report itself has stated that she and the appellant had developed relationship and wanted to marry. Therefore, the sexual intercourse, if any, committed was only with the consent and as such no prima facie case of commission of sexual intercourse on false pretext of marriage is made out. Learned counsel for the appellant submits that the very act of prosecutrix including the other members of the family shows that the prosecutrix because of certain dispute between the parties is now harassing the appellant and lodged false report. He would submit that the learned Court below has not examined the material, swayed only by bar under Section 18 of the Act of 1989, without taking into consideration the law of land that even if the allegation are of commission of offence under the Act of 1989, in exceptional cases, anticipatory bail can be granted notwithstanding the bar created under Section 18 of the Act of 1989. Learned counsel for the appellant has also referred to the statement of the prosecutrix in a trial against her first husband and submits that the prosecutrix is in the habit of making such false allegation.
6. On the other hand, learned counsel for the State opposed the bail application by submitting that the report of the prosecutrix taken on its face value, it makes out prima facie case not only under Sections 376 & 420 IPC but also under the Act of 1989 because the appellant is prima facie found to have committed the act of rape on the prosecutrix by giving false pretext of marriage suppressing that he has already married and extracted Rs.20 lakhs from her on the false assurance of marriage without any intention to go for

marriage and abused the prosecutrix knowing fully well that she belonged to scheduled tribe. Therefore, bar under the Act of 1989 would be instantaneously applicable rendering the application for grant of anticipatory bail not maintainable under the law.

7. I have heard learned counsel for the parties and perused the case diary.
8. The material disclosed in the diary is that the prosecutrix lodged report stating that she had developed relation in the month of April 2019 with the present appellant. Her allegations are that the appellant later on assured that they would go for marriage and an agreement was also executed to that effect but this fact was not disclosed to the prosecutrix and suppressed that the appellant was already married. According to the prosecutrix, this makes out a prima facie case of false pretext of marriage and therefore, a case of rape. She has also made allegation that about Rs.20 lakhs were extracted from her.
9. The entire case of the prosecution even if it is taken as it is, it hardly constitutes a material to show that the alleged act of committing rape on the prosecutrix and extracting Rs.20 lakh was for the reason that the prosecutrix belonged to scheduled tribe. This aspect was considered by the Supreme Court in the case of **Khuman Singh Vs. State of Madhya Pradesh** (AIR 2019 SC 4030), wherein it was held thus:-

“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.”

10. The other decision in **Dinesh alias Buddha Vs. State of Rajasthan** (2006) 3 SCC 771, referred to in the case of *Khuman Singh* (supra) related to commission of offence of rape and as the prosecutrix happened to be the woman belonged to scheduled tribe, conviction was ordered under Section 3 (2) (v) of the Act of 1989. In that case (*Dinesh alias Buddha*), after examination of the evidence on record, the Court came to the conclusion that there was no evidence to show that the only reason for commission of rape

was that the prosecutrix belonged to scheduled tribe. Therefore, the conviction under Section 3 (2) (v) of the Act of 1989 is set aside.

11. Therefore, in the present case, this Court finds that rejection of bail on the basis of bar contained under Section 18 of the Act of 1989 would not be applicable.

12. However, in the present case, the prosecutrix has come out with the allegation of she having been subjected to sexual intercourse during affair on false pretext of marriage without she being informed by the appellant that he was already married. This constitutes a prima facie material of false pretext of marriage because according to the prosecutrix, it was not known to her that the appellant was not only married but he has children as well. Not only this, a prima facie material is reflected from the case diary that the prosecutrix has paid about Rs. 20 lakhs to the present appellant. Taking into consideration what has been stated in the complaint, even if it is held that the bar under Section 18 of the Act of 1989 may not come in the way in granting anticipatory bail to the appellant, on the basis of said material on record, this Court does not consider present to be a fit case for grant of anticipatory bail. Therefore, the order rejecting bail application by the Court below need not be interfered with.

13. The appeal is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge