

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1069 of 2021**

Pragyesh Tiwari S/o Ramesh Tiwari Aged About 44 Years
 R/o Dullapur Bazar P.S. And Tehsil Pandariya, District :
 Kawardha (Kabirdham), Chhattisgarh --- **Applicant**

Versus

State of Chhattisgarh through Police Station Mungeli,
 District Mungeli Chhattisgarh. --- **Respondent**

For the applicant : Mr. Bharat Sharma, Advocate.
 For the State : Mrs. Hamida Siddiqui, Dy. Govt. Adv.
 For the objector : Ms. Rajni Soren, Advocate.

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****17.12.2021**

1. The appeal arises out of order dated 14.09.2021, by which, learned Special Judge (SC/ST Act) Mungeli, has rejected the application for grant of anticipatory bail filed by the appellant.
2. The appellant is apprehending arrest in connection with Crime No. 197/2021 registered at Police Station Lormi, Chowki Chilfi, Distt. Mungeli (CG) for commission of offences under sections 3(2)(v), 3(1)(Ya)(Kha) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act of 1989")
3. As per the prosecution case, On 15.06.2021, First Information Report was lodged on the complaint of one Yashoda Bai to the extent that on 14.6.2021 her mother Smt. Shabana Bai Dughara has committed self-

immolation because of harassment and threatening to kill her caused by accused Jagdish Gond, Sushila Bai, Rajju Gond, Sarojni Bai, Bharat etc., on suspicion that the deceased was practicing witch-craft (Tonhi). It is alleged that deceased set-herself ablaze for fear of harassment and continuous threatening by accused, thereby, the offence has been committed.

4. Learned counsel for the applicant submits that earlier for the offence u/s 306, 506 of IPC and sections 4 & 5 of the C.G. Tonahi Pratadna Act, the applicant was enlarged on anticipatory bail by order dated 29.07.2021 passed by the Coordinate Bench of this Court in M.Cr.C(A) No.826 of 2021 wherein the Court recorded the following observations.

“7. After the incident, dying declaration of deceased was recorded, in which, she has levelled allegations against Jagdish Gond, Sushila Bai, Rajju Gond, Sarojni Bai and Bharat. In the First Information Report though the name of other persons are there, but name of present applicant does not find place. Documents are filed showing applicant prior to date of incident was out station for three-four days.

8. Taking into the entire facts and circumstances of the case, nature of allegations, particularly, dying declaration of deceased and further the contents of First Information Report, without commenting anything into the merits of the case, I am inclined to release the present applicant on anticipatory bail.”

5. Learned counsel would submit that the applicant's name was not found either in the FIR or in the dying

declaration and after granting anticipatory bail on 29.07.2021, the statement of one Tilak Ram Dhruv was recorded on 15.09.2021 and another statement was already recorded. He would submit that after the bail was furnished, it came to the notice of the appellant that a case under section 3(2)(v) & 3(1)(Ya)(Kha) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act was added. However, in any case, with all probability, the issue was considered by the coordinate bench of this Court for grant of bail in earlier application.

6. Per contra, learned State Counsel opposes the bail. However, on a query being made whether the name of the applicant appeared in the FIR or dying declaration, she submits that the name of present applicant did not appear in the dying declaration.
7. Learned counsel for the objector vehemently opposes the arguments and would submit that the statement of Tilak Ram was recorded on 15.09.2021 and another statement was also recorded prior to grant of bail on 29.07.2021, therefore, prima facie case would be made out against the applicant. She further submits that the bar created u/s 18 of the Act of 1989 would apply in this case.
8. Perused the earlier order dated 29.07.2021 passed by the coordinate Bench of this Court in M.Cr.C.No. 826/2021.
9. The issue arising for consideration is whether the anticipatory bail application would be maintainable in

view of bar under Section 18 of the Act of 1989.

This legal issue is no longer res integra in view of the authoritative pronouncement of the Supreme Court in the case of *Prathvi Raj Chauhan v. Union of India and others (2020) 4 SCC 727* wherein the Supreme Court had an occasion to consider the maintainability of application under Section 438 of Cr.P.C., in the matter of allegation of offence under the Act of 1989.

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

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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”.

10. Therefore, even though there may be allegations of offence under the Act of 1989, if a case is met out to be exceptional in nature, in exceptional cases, benefit of grant of anticipatory bail could be extended and in such cases the bar under section 18 of the Act of 1989 may not operate.
11. In the present case, it would show that at first instance the name of the applicant did not find place either in the FIR or in the dying declaration, therefore, on earlier occasion, the anticipatory bail was granted to the appellant. Even after grant of anticipatory bail on 29.07.2021 if the statement of Tilak Ram Dhruv is recorded and considered at this stage, it would be deemed to be an improvement in his statement and it was recorded after considerable time as would be evident from the case diary of 15.09.2021 and in respect of the other allegations, while the earlier bail application was allowed, they were considered as omnibus allegations, on the basis of the material available on record.
12. In view of the above position, it is not in dispute that initially the name of the applicant did not appear either in the FIR or in dying declaration and because of the fact that she belongs to Scheduled Caste on subsequent occasion especially after grant of anticipatory bail on 29.07.2021, the same benefit cannot be denied and subsequent addition of offence u/s 3(2)(v) and 3(1) (Ya) (Kha) of the Act would not be considered as a bar under section 18 of the Act.

13. Consequently, I am inclined to allow this appeal and set aside the order dated 14.09.2021 passed by the learned Special Judge. Accordingly, the order dt. 14.9.2021 is set aside and it is directed that in the event of arrest of the appellant in connection with the aforesaid offence, he shall be released on bail by the officer arresting him on executing a personal bond in sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the officer arresting him or the concerned Investigating Officer. The appellant shall also abide by the following conditions :-

- (i) that he shall make himself available for interrogation before the investigating officer as and when required;
- (ii) that 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/her from disclosing such facts to the Court or any police officer;
- (iii) that he shall not act in any manner which will be prejudicial to fair and expeditious trial; and
- (iv) that he shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

C.c. as per rules.

Sd/-
GOUTAM BHADURI
JUDGE