

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 845 of 2020

1. Rajnish Mishra S/o Shri Dr. A.K. Mishra Aged About 40 Years Vill. And Post - Marra, P.S. Utai, Tah.- Patan, Dist.- Durg (Chhattisgarh).

---- Appellant

Versus

1. State Of Chhattisgarh Through: S.H.O. P.S. Utai, Dist.- Durg (Chhattisgarh).

---- Respondent

CRA No. 848 of 2020

1. Vijay Jain S/o Shri Meghraj Jain Aged About 42 Years R/o Vill. And Post- Marra, P.S. Utai, Tah.- Patan, Dist.- Durg (Chhattisgarh).
2. Dilip Jain S/o Shri Meghraj Jain Aged About 39 Years R/o Vill. And Post- Marra, P.S. Utai, Tah.- Patan, Dist.- Durg (Chhattisgarh).

---- Appellants

Versus

1. State Of Chhattisgarh Through- S.H.O. P.S. Utai, Dist.- Durg (Chhattisgarh).

---- Respondent

For respective Appellants -	Shri Prateek Sharma, Shri Ravindra Sharma and Ms. Prakriti Jain, Advocates.
For Respondent/State -	Shri Ravish Verma, Government Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra
Order On Board

14/01/2021

1. Since both the appeals are arising out of same crime number i.e. 58/2020 they are being considered and decided by this common order.
2. The appellants have preferred these appeals for grant of anticipatory bail, as they apprehend their arrest in connection with Crime No.58/2020, registered at Police Station- Utai, District: Durg (C.G.) for the offence punishable under Sections 294, 323, 34, 506 of Indian Penal Code & Under Section 3(1)(x) {now re-numbered as 3(1)(r)} of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
3. In the First Information Report lodged by Narmada Bai, mother of Paleshwar Thakur, Sarpanch of Gram Panchayat -Marra, police station- Utai, District- Durg (C.G.) on 26-02-2020, she alleged that when she was in her house at about 7 p.m. on 25-02-2020, present appellants Rajnish Mishra, Vijay Jain and Dilip Jain reached to her house and started enquiring about her son. When informed that her son is not in the house, they started abusing her in the name of her caste saying that “*gond ganwar sarpanchi nahi kar sakte*”. In her statement under Section 164 of Cr.P.C. recorded after three months i.e. on 22-05-2020, she would make further allegations that the appellant Rajnish Mishra caught hold of her hand and when she tried to free herself, she was pushed on the ground.
4. Shri Prateek Sharma and Shri Ravindra Sharma, learned counsels for the appellants would refer to the law laid down by the Supreme Court in ***Hitesh Verma v. State of Uttarakhand and Another***¹ to argue that if the offence is committed within the four walls of a building then the same would not attract an offence under Section 3(1)(r) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

1 AIR 2020 SC 5584

5. *Per contra*, learned State counsel and learned counsel for the objector would submit that in the FIR itself, it is mentioned that two witnesses namely; Deepa Verma and Umeshwari were present at the time of occurrence, thus, the offence was committed within public view. Thus therefore, in view of the bar under Section 18 of the Act, 1989, the applications for anticipatory bail are not maintainable.
6. It is the settled law that Section 18 of the Act does not create absolute bar for considering prayer for grant of anticipatory bail. If on the face of allegation contained in the FIR, an offence under Act 1989 is, *prima facie*, not attracted, the Court has power to consider prayer for grant of anticipatory bail.
7. In the case at hand, the incident had taken place inside the house of complainant Narmada Bai, therefore, it is not a public place or in a place within public view.
8. In ***Hitesh Verma*** (Supra), the Supreme Court has referred to its earlier judgment in the matter of ***Swaran Singh and Others v State through Standing Counsel and Another***² to hold thus at para 14:-

14. Another key ingredient of the provision is insult or intimidation in “any place within public view”. What is to be regarded as “place in public view” had come up for consideration before this Court in the judgment reported as *Swaran Singh & Ors. v. State through Standing Counsel & Ors.* The Court had drawn distinction between the expression “public place” and “in any place within public view”. It was held that if an offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view. The

2 (2008) 8 SCC 435

Court held as under:

“28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 (by calling him a “chamar”) when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression “place within public view” with the expression “public place”. A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies.”

9. Having bestowed anxious consideration on the facts of the present case, it is found that the present offence has taken place inside the house of complainant Narmada Bai. It is debatable and shall be considered by the trial Court at the time of framing charges as to whether the offence under the Act, 1989 would be made out or not. However, in view of the decision rendered in *Hitesh Verma* (supra), prima facie the said offence may not be made out.

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 that other offences are bailable and the facts and circumstances of the case, I am inclined to release Rajnish Mishra, Vijay Jain and Dilip Jain on anticipatory bail.
12. Accordingly, both the appeals are allowed and the impugned order is set-aside. The appellants are directed to be released on anticipatory bail on each of them furnishing a personal bond for a sum of Rs.50,000/- with one surety for the like amount to the satisfaction of the Arresting Officer with the following conditions:
- (i) they shall make themselves available for interrogation by a police officer as and when required;
 - (ii) they 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; and
 - (iii) they shall not influence the witnesses during pendency of the trial.

13. Certified copy as per rules.

Sd/-

(Prashant Kumar Mishra)

Judge

Amardeep

Head Note : Offence u/S 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 being committed inside the house, which is not a public place or in any place within public view, the accused is entitled to be released on anticipatory bail.