

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1094 of 2021**

1. Sukhmat Bai W/o Ramu Gond Aged About 65 Years R/o 123, Village Sonpuri, Chirha, Tehsil Bemetara, District Bemetara (Chhattisgarh) Wrongly Mentioned In The Impugned Order As Village Ghatoli Chowki Chilfi, P.S. Lormi, District Mungeli (Chhattisgarh)
2. Jalbai W/o Bharat Gond Aged About 45 Years Resident of Village Ghatoli Chowki Chilfi, P.S. Lormi, District : Mungeli, Chhattisgarh
3. Pramilabai W/o Ramesh Gond Aged About 70 Years R/o Village Saraiha, P.S. Kukdur, Tehsil and District Kawardha (Kabirdham), Chhattisgarh
4. Shriram Gond S/o Hirasingh Gond Aged About 50 Years R/o Katul Board Colony Ward No. 57, P.S. And District Durg (Chhattisgarh) **--- Appellants**

Versus

State of Chhattisgarh through Police Station Chilfi, Lormi, Ajak,
District : Mungeli, Chhattisgarh **---- Respondent**

For the applicants	: 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 17.09.2021, by which, learned Special Judge (SC/ST Act) Mungeli, has rejected the application for grant of anticipatory bail filed by the appellants.
2. The appellants are 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 506, 306 read with section 34

of IPC and section 4, 5 of the Chhattisgarh tonahi Pratadna Ac, 2005 and 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. Learned counsel for the appellants at the outset would submit that the name of applicant no.4 Shriram gond has been removed by the Police Authority, therefore, the appeal may be heard and considered in respect of appellants 1 to 3. Accordingly, the appeal of appellant no.4 is dismissed as withdrawn.
4. 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 torture/harassment and threatening 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 harassments/torture and continuous threatening by the accused to kill her, thereby, the offence has been committed.
5. Learned counsel for the applicants submits that earlier the names of applicants did not find place either in the FIR or in the dying declaration and subsequently their names have been added. He further submits that the applicants have been inculpated at a later stage only on the omnibus allegations of daughter Yashoda Bai and sister Nirmala that applicants 1 to 3 have ill-treated the

deceased. He further submits that after one month of filing of FIR the offence under section 3(2)(v) and 3(1)(Ya)(Kha) of the SC/ST Act has been added and their names have been mentioned under the Special Act, therefore, the bar under section 18 of the Special Act would not apply in this case. It is further submitted that the complainant at a later stage tried to encash the opportunity by naming the other persons in the dying declaration to inculcate them including the names of present applicants.

6. Per contra, learned State counsel opposes the bail. However, on a query being made whether at the first instance the names of the appellants appeared in the FIR or dying declaration, she submits that the names of present applicants did not appear in the dying declaration or in the FIR.
7. Learned counsel for the objector opposes the bail and would submit that the bar created under section 18 would come into play in this case.
8. 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 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.

.....

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”.

9. 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.
10. In the present case it would show that at first instance the names of the applicants Sukmat Bai, Jalbai and Parmilabai did not find place either in the FIR or in the

dying declaration and after recording the subsequent police statements, their names have been added. Even the offence under the Special Act has been added after one month of lodging of FIR.

11. In view of the above position, it is not in dispute that at the first instance the names of the applicants did not find place either in the FIR or in the dying declaration and only on general allegations, their names have been added at a later stage and because of the fact that the deceased belongs to Scheduled Caste, on subsequent occasion, their names have been added under the Special Act also therefore 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.
12. Consequently, I am inclined to allow this appeal and set aside the order dated 17.09.2021 passed by the learned Special Judge. Accordingly, the order dt. 17.9.2021 is set aside and it is directed that in the event of arrest of the appellants 1 to 3 namely Sukhmat Bai, Jalbai and Parmilabai in connection with the aforesaid offence, they shall be released on bail by the officer arresting them 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 them or the concerned Investigating Officer. The appellants 1 to 3 shall also abide by the following conditions :-
 - (i) that they shall make themselves available for interrogation before the investigating officer as and when required;
 - (ii) that 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/her from disclosing such facts to the Court or any police officer;

(iii) that they shall not act in any manner which will be prejudicial to fair and expeditious trial; and

(iv) that they shall appear before the trial Court on each and every date given to them by the said Court till disposal of the trial.

C.c. as per rules.

Sd/-

**GOUTAM BHADURI
JUDGE**

Rao