

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.923 of 2020**

- A. Chandrashekar Rao, S/o Late Govind Rao, 62 years, R/o Swarna Bhoomi Colony, Raipur, District Raipur (CG)

---- Appellant**Versus**

1. State of Chhattisgarh, through P.S. AJAKS Jagdalpur, Distt. Bastar (CG).
2. Tularam Mourya, S/o Shri Shambhu Ram Mourya, R/o Vill. Bhatpal, Tah. Bastar, District Bastar (CG) (Complainant)

....Respondents

For Appellant	:	Mr. Prafull Bharat, Advocate
For Respondents	:	Mr. Anand Verma, Dy. Govt. Advocate

Hon'ble Mr. Justice Parth Prateem Sahu**Order On Board****01/04/2021**

1. This criminal appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act of 1989') has been preferred against the order dated 22.10.2020 passed by learned Special Judge (SC & ST Act), Jagdalpur in Special Case No.11/19 rejecting application of the appellant for grant of anticipatory bail in connection with Crime No.276/19 registered at Police Station AJAK, Jagdalpur for commission of offence punishable under Sections 420, 120B, 294, 506 of the Indian Penal Code and Sections 3 (1) (r) & 3 (1) (s) of the Act of 1989.
2. Case of the prosecution, in brief, is that a total sum of Rs.5,63,000/- has been sanctioned to complainant/respondent No.2 under KCC and ATL limits by the ADB, State Bank of India, Dharampura Branch, Jagdalpur for the purpose of fencing of 1.740 hectare (4.35 acre) area of land by barbed wire and laying of pipeline for drip irrigation system. At the time of sanction of loan, Imitiaz Khan was posted as Field Officer, Prakash Joshi as Cashier and present applicant as Manager in ADB, Dharampura Branch, Jagdalpur. In the

month of November, 2009 the complainant withdrew a sum of Rs.1,50,000/- from his loan account and out of this amount, the Cashier of bank has made payment of only Rs.50,000/-to him and remaining amount of Rs.1,00,000/- has been paid to one Ballu Chawda alias Balram Chawda. Further case of the prosecution is that the work of barbed wire fencing and laying down of pipeline for drip irrigation system has been done only in an area of 1.35 acre of land of the complainant, but the entire loan amount sanctioned to the complainant for total area of 4.35 acre has been released on the basis of work completion certificate issued by the then Agriculture Extension Development Officers Shri Rupendra Tiwari and Shri R.K. Mishra. Based on the written complaint lodged on 16.5.2019 mentioning therein period of commission of crime from the year 2009 to 2016, the aforementioned offence has been registered against Balram Chawda, Raghunath Sethiya, Rupendra Choudhary, Radha Krishna Mishra, Imtiaz, Prakash Joshi and present applicant.

3. Mr. Prafull Bharat, learned counsel for the applicant submits that a bare reading of the entire written complaint lodged by respondent No.2 would show that loan was sanctioned in the year 2009 by the bank where present applicant was posted as Manager. Period of commission of offence has been shown from 25.7.2009 to 25.7.2016 and written report has been lodged only on 18.5.2019. In the entire complaint no allegation of any nature has been levelled against the applicant. Even there is no allegation in the complaint that at the time of sanction of loan, there was any interaction of complainant with present applicant. The complaint has been filed only when the Bank has initiated proceedings under Section 138 of the Negotiable Instruments Act, 1881 against the complainant based on which charge under Section 138 of the Negotiable Instruments Act, 1881 has been framed against him on 14.1.2019. He submits that the Court below rejected the application by recording a finding that in view of bar under

Section 18 of the Act of 1989, the application is not maintainable. However, as there is no allegation of any nature against the applicant in the complaint attracting any of the provisions of the Act of 1989, much less the offence under Section 3 (1) (r) & (s) of the Act of 1989, the bar under Section 18 of the Act of 1989 will not come in the way of entertaining this anticipatory bail application of applicant. In support of this contention, he places his reliance on the decision of Hon'ble Supreme Court in the case of **Prathvi Raj Chauhan Vs. Union of India & ors** reported in **(2020) 4 SCC 727**.

4. On the other hand, Mr. Anand Verma, learned Deputy Government Advocate for the State opposes the prayer for grant of anticipatory bail and submits that in written complaint lodged by respondent No.2 there are specific allegations against different persons. As the complainant belongs to scheduled tribe community, therefore, the offence under the provisions of the Act of 1989 are also registered. In view of bar provided under Section 18 of the Act of 1989, this application for anticipatory bail is not maintainable. He further submits that as per material available in the case diary, in the month of May, 2015 the bank has issued notice for recovery of loan amount. The Field Officer of the bank is the sanctioning authority and sanction of loan is to be approved by the Manager of concerned bank. He submits that as the offence under the provisions of the Act of 1989 has also been registered against the applicant and other persons, the prayer for grant of anticipatory bail has rightly been rejected by the Court below.
5. I have heard learned counsel for the parties.
6. Perusal of written complaint submitted by respondent No.2 before the Superintendent of Police, Jagdalpur, District Bastar reveals that a loan was sanctioned to complainant by the bank for the purpose of fencing of agriculture field by barbed wires

and laying of pipeline for drip irrigation system. Specific allegations have been levelled against one Ballu Chawda alias Balram Chawda that he has taken the money immediately after withdrawal from the bank and that the work of fencing through barbed wire and laying of pipeline has been done only in an area of 1.35 acre of land and the entire loan amount has been withdrawn on the basis of work completion certificate given by the officers of Horticulture Department. There is no allegation levelled against present applicant of any nature showing his involvement in disbursement of amount etc. When there is no specific allegation against this applicant of any nature, the offence under Sections 3 (1) (r) & 3 (1) (s) of the Act of 1989 would not be attracted. Therefore, in the light of decisions of Hon'ble Supreme Court in **Prathviraj (supra)** and **Dr. Subhash Kashinath Mahajan vs. State of Maharashtra & another** reported in **(2018) 6 SCC 454**, I do not find that facts of present case will attract provisions of Section 18 of the Act of 1989. There is no material available in the record showing that the applicant has committed any atrocity against the complainant/respondent No.2.

7. Taking into consideration the nature of allegations, the entirety of the facts and the material available in the case diary, without commenting anything on merits of case, I am inclined to grant anticipatory bail to the applicant.
8. Accordingly, the appeal is allowed and it is directed that in the event of arrest of applicant in connection with the crime in question, he shall be released on anticipatory bail by the officer arresting him on his executing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Investigating Officer. The applicant shall also abide by the following conditions :
 - (i) that the applicant shall make himself available for interrogation before the Investigating Officer as and when required;

- (ii) that 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;
- (iii) that the applicant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that the applicant shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-