

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 941 of 2020**

1. Nirmal Gupta S/o Shri Gaji Prasad Gupta, Aged About 64 Years
R/o Rajeev Gandhi Nagar, Bhajandeepea, Raigarh, Police
Station Kotwali, Tahsil And District Raigarh Chhattisgarh.
2. Smt. Shanti Gupta W/o Nirmal Gupta, Aged About 60 Years R/o
Rajeev Gandhi Nagar, Bhajandeepea, Raigarh, Police Station
Kotwali, Tahsil And District Raigarh Chhattisgarh.

---- Appellants**Versus**

1. State of Chhattisgarh Through S.H.O. of The Police Station
A.J.K., Tahsil And District Raigarh Chhattisgarh.

---- Respondent

For Appellants	-	Shri Abhishek Saraf, Advocate.
For Respondent	-	Shri Ayaz Naved, Government Advocate.
For Objector	-	Ms. Anuja Sharma, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra
Order On Board**18/02/2021**

1. The appellants have preferred this appeal for grant of anticipatory bail, as they apprehend their arrest in connection with Crime No.798/2020, registered at Police Station: A.J.K., District: Raigarh (C.G.) for the offence punishable under Sections 498 A/34 of the Indian Penal Code and Sections 3(1)(x), 3(2)(V) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Appellant No.1, Nirmal Gupta is the father-in-Law, a handicapped person aged about 64 years whereas appellant No.2, Smt. Shanti Gupta is the mother-in-Law of complainant Prabha Chowdhary who was married with appellant's son Shubham Gupta on 02-04-2018.
3. As the complainant belongs to scheduled caste community, initially the marriage was performed under the special marriage Act but later on they were married under Hindu rituals. As per the written complaint, she was subjected to cruelty on demand of dowry in form of cash amount of Rs.3 lac and was also humiliated in the name of her caste and was further subjected to physical cruelty.
4. Learned counsel for the appellants submits that not only the FIR is delayed but also there was no humiliation in the name of her caste and further no dowry was ever demanded and also the appellants have accepted her as their daughter-in-law by allowing their son to marry her.
5. Per contra, learned State counsel and learned counsel for the Objector would oppose the bail application particularly with reference to Section 18 of the Act, 1989 as also on the ground that the complainant was subjected to physical cruelty as well.
6. Having heard learned counsel for the parties, I am inclined to exercise jurisdiction under Section 438 of Cr.P.C. for the reason that despite the girl being a member of scheduled caste, she was accepted in the family and they were residing

together though, the appellants stayed in a different part of the same house. In so far as physical cruelty is concerned, it is complainant's own case that she was ousted from the house in April, 2020 whereas she was medically examined after her written report on 22-10-2020. During this six months, she was away from the appellants. There also appears delay in lodging the FIR.

7. In the matter of **Hitesh Verma V. State of Uttarakhand and Another**¹, the Hon'ble Supreme Court has referred to its earlier decision rendered in **Swaran Singh & Ors 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 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

1 AIR 2020 SC 5584

2 (2008) 8 SCC 435

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."

8. In the case at hand also, the incidents constituting the allegations attracting offence under Sections 3 (1) (x) and 3 (2) (V) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 have taken place within the four corners of the marital house of the complainant. There is no allegation that such incident happened in the presence of outsiders.
9. 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.
10. In the circumstances, I am inclined to release the appellants on anticipatory bail.

11. Accordingly, the present appeal is 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:

- they shall make themselves available for interrogation by a police officer as and when required;
- 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
- they shall not influence the witnesses during pendency of the trial.

SD/-

(Prashant Kumar Mishra)
Judge

Amardeep