

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 958 of 2020**

Rajesh Agrawal S/o Late Phoolchand Agrawal Aged About 45 Years R/o
Bazar Para, Ward No. 14, Newra, Tehsil Tilda, District Raipur Chhattisgarh,
---- **Appellant**

Versus

State Of Chhattisgarh Through Police Station Tilda, District Raipur
Chhattisgarh, District : Raipur, Chhattisgarh ---- **Respondent**

For Appellant	:	Shri Bharat Sharma, Advocate
For Respondent/State	:	Smt. Fouzia Mirza, Additional A.G.

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava**Order on Board****11.02.2021**

Heard.

1. This appeal has been filed by the appellant against order dated 12.11.2020 passed by Special Judge (Atrocities) Raipur, District Raipur CG, by which, the appellant's application for grant of anticipatory bail has been rejected.
2. The appellant is apprehending his arrest in connection with Crime No.361/2014 registered at Police Station-Tilda, Newra Raipur, District Raipur (C.G.) for alleged commission of offence under Section 294, 323, 506, 147, 427 of IPC and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act of 1989').
3. The appellant is alleged to have committed offence under Section 294, 323, 506, 147, 427 of IPC and Section 3(1)(x) of the Act of 1989 and the prosecution case is that on 11.12.2014 that house of the complainant was demolished with the help of machine on the allegation that the house was constructed on an encroached land without any authority. Further allegation is that when the complainant sought to resist the act of demolition, she was badly abused on caste basis and also assaulted and manhandled by the accused person.

Learned Court below rejected the bail application holding that in view of bar under Section 18 of the Act of 1989 and in view of nature of allegation, anticipatory bail could not be granted. This has given rise to appeal.

4. Learned counsel for the appellant would submit that present is a case of false implication. He would submit that complainant initially lodged a report on 11.12.2014 in respect of the incident on that very day, involving number of persons by name but she did not involve the present appellant in the said case. The accused of the said case was granted anticipatory bail by this Court vide order dated 17.08.2015 in M.Cr.C.A. No.675 of 2015. After about 1 year and 8 months, the complainant started making new allegation, now involving present appellant for the first time in the alleged incident of demolition of her house and abuse, intimidation. Learned counsel for the appellant would submit that the other accused of this case were tried and all of them have been acquitted and the complainant examined as witness No.7 on 14.12.2017 has involved the present appellant stating that the appellant was also involved in the alleged commission of offence whereas on 11.12.2014, in the report, name of the appellant was nowhere mentioned. Learned counsel for the appellant would submit that in this manner, the complainant is attempting to falsely involve the appellant with ulterior motive. He would submit that present is a case of exceptional nature where the appellant is involved in the alleged commission of offence after 1 year and 8 months. It is not a case that the complainant was a minor child or a person with any disability. Therefore, in such a case, the appellant may be protected by grant of anticipatory bail because the other co-accused Jagdish Prasad Singhania, who has now been given a clean chit by the complainant, had also approached this Court in this very case under the same crime number and he was protected by grant of anticipatory bail.
5. On the other hand, learned counsel for the State opposes the prayer and submits that even though on 11.12.2014, the complainant had not named the present appellant, in her supplementary case diary statement recorded on 01.08.2016, she involved the present appellant in specific name and also given reason that because of mistake, name of the present appellant was excluded. It is submitted that since the allegations are of demolition of the house of the complainant, abusing and intimidating her knowing that she belongs to the scheduled tribe, in place within public view, offence under Section 3(1)(x) of the Act of 1989, as it existed prior to amendment, is made out and therefore, the appellant may not be entitled for grant of bail.

6. After having heard learned counsel for the parties and perused the relevant records, prima facie present appears to be a case of afterthought impleadment of the present appellant. The complainant though stated to be belonging to scheduled tribe, she is a mature lady, aged more than 40 years. In the FIR which was lodged on 11.12.2014, she has specifically named the accused persons, who had come for demolition of her house on the allegation that complainant has encroached their land. It was after about 1 year and 8 months that she suddenly comes out with supplementary case diary statement and now involving the present appellant that his name was excluded by mistake. Interestingly enough, she has given clean chit to many other accused during trial. The other co-accused of the case Jagdish Prasad Singhania had also approached before this Court earlier seeking anticipatory bail stating that no case is made out for commission of offence under Section 3(1)(x) of the Act of 1989 in the background that a demolition was in accordance with law because the complainant has constructed a house on a land which has been encroached by her.

7. In a case like this where the allegations are leveled to include a person after about 1 year and 8 months by simply stating that because of mistake name of accused could not be mentioned in FIR, would certainly be in the category of exceptional cases making out a case for grant of anticipatory bail despite bar under Section 18 of the Act of 1989 in view of what has been observed by the Supreme Court in the case of **Prathvi Raj Chauhan Vs. Union of India and Others, 2020 (4) SCC 727**. It was held as below :

“11. Concerning the applicability of provisions of Section 438 Cr.PC, 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 Sections 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 emphasise 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.”

8. Learned Court below did not consider the aforesaid material aspect of

implication of the present appellant in the alleged commission of offence after 1 year and 8 months. Therefore, the impugned order rejecting application cannot be sustained and is set aside. The appellant is entitled to grant of anticipatory bail.

9. Accordingly, the appeal is allowed. It is directed that in the event of arrest, the appellant shall be released on bail, on his furnishing a personal bond in the sum of Rs.25,000/- with one local surety for the like amount to the satisfaction of the arresting officer and he shall abide by all the following terms and conditions :

- (i) that the applicant shall make himself available for interrogation by a Police 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 from disclosing such facts to the Court or to 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.

Certified copy as per rules.

Sd/-
(Manindra Mohan Shrivastava)
Judge