

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCRA No.1189 of 2021

1. Sanat Kumar Kashyap S/o Kapilnath Kashyap Aged About 60 Years R/o Village Konargarh Gudipara, Police Station Mulmula, District Janjgir Champa Chhattisgarh.

---- Appellant

Versus

1. State Of Chhattisgarh Through The District Magistrate , Janjgir, (Police Station Mulmula), District Janjgir Champa Chhattisgarh

---- Respondent

For Appellant	Mr. Vivek Singhal, Advocate
For Respondent /State	Mr. Arjit Tiwari, Panel Lawyer
For objector	Mr. Akhtar Hussain, Advocate

Order on BoardByHon'ble Shri Justice Goutam Bhaduri7/12/2021

1. The present appeal is arising out of order dated 30-9-2021 passed by the Special Judge (Atrocities), Janjgir, District Janjgir-Champa, in BA No.722/2021.
2. The appellant has preferred this appeal under Section 14A(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act, 1989') for grant of anticipatory bail under Section 438 of the Cr.P.C. as he apprehends his arrest in connection with Crime No.186/2021, registered at Police Station Mulmula, District Janjgir-Champa (CG), for offence punishable under Sections 147, 294, 506, 323 of the Indian Penal Code and under Section 3(1)(द)(घ), 3(2) (5-क) of the Act, 1989.

3. As per the prosecution case on 5-8-2021 while the victim was working in her agricultural fields at that time few people of the village went there and left cattle to graze the field. When the victim objected the same, she was abused in the name of caste and threat was extended to kill her.
4. Learned counsel for the appellant would submit that the appellant has been falsely implicated in the case. He would further submit that the complainant herself encroached upon the Government land. In fact, the field was freed to graze the cattle and for which the munadi was already made by the Kotwar. He would next submit that reading of the FIR would not disclose that any abusive language touching the caste was ever uttered and no injury was caused, therefore, the appellant may be enlarged on bail.
5. Learned counsel for the State as well as learned counsel for the objector, *per contra*, would oppose the prayer for grant of bail. They would submit that the bar has been created under Section 18 of the Act, 1989 for consideration of appeal under Section 438 of the Cr.P.C. As per the photographs, it is manifest that the mob was in the field of the victim and left the cattle to graze the field. Thus, no benefit under Section 438 of the Cr.P.C. can be extended to the appellants.
6. Heard learned counsel for the parties.
7. The Hon'ble Supreme Court in ***Prathvi Raj Chauhan v Union of India and Others*** reported in (2020) 4 SCC 727 has laid down the law that the applicability of provisions of Section 438 Cr.P.C. would normally not apply to the cases under the Act, 1989. However, if the complaint does not make out a, *prima facie*, case for applicability of the provisions of the Act,

1989 the bar created by Sections 18 and 18-A(i) shall not apply.

8. Reading of the FIR, *prima facie*, do not disclose that any abusive language about the victim was uttered. Further more, the case diary would show that there is no external injuries on the body of the victim except the complaint of pain in the back and limbs. Thus, considering the FIR as well as the medical report, I am inclined to extend the benefit of Section 438 of the Cr.P.C. to the appellant.
9. Accordingly, the appeal is allowed and the impugned order is set-aside.
10. The appellant is directed to be released on anticipatory bail on his furnishing a personal bond for a sum of Rs.25,000/- with one surety each in the like sum to the satisfaction of the Arresting Officer with the following conditions:
 - (i) he shall make himself available for interrogation by a police officer as and when required;
 - (ii) 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) he shall not influence the witnesses during pendency of the trial.
11. Certified copy as per rules.

Sd/-
(Goutam Bhaduri)
Judge

Gowri