

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1008 of 2020**

1. Vijay Gupta S/o Late Ramlal Gupta Aged About 59 Years R/o Village Katima, Police Station Kusumi, District Balrampur Ramanujganj Chhattisgarh
2. Hevanchand Gupta S/o Late Ramlal Gupta Aged About 52 Years R/o Village Katima, Police Station Kusumi, District Balrampur Ramanujganj Chhattisgarh
3. Smt. Ritu Gupta W/o Jitendra Gupta Aged About 32 Years R/o Village Katima, Police Station Kusumi, District Balrampur Ramanujganj Chhattisgarh

---- Appellants**Versus**

- State Of Chhattisgarh Through Police Station Karoundha, District Balrampur Ramanujganj Chhattisgarh

---- Respondent

For Appellant	:	Shri Manoj Paranjpe, Advocate
For State	:	Shri Neeraj Pradhan, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****11/02/2021**

This appeal arises out of order dated 18/06/2020 passed by the learned Special Judge (Atrocities) Balrampur-Ramanujganj by which, appellants' application for grant of anticipatory bail has been rejected mainly on the ground that bar under Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act of 1989') operated against the appellant.

2. The appellants are apprehending their arrest in connection with Crime No.10/2020 registered at Police Station – Karoundha, District – Balrampur-Ramanujganj (C.G.) for alleged commission of offences under Section 451, 506 of IPC and Section 3 (2) (v) (a) of the Act of 1989.

3. A report / FIR was lodged by the complainant against the son of appellant No.1 – Vijay Gupta alleging commission of certain offences and therefore, the appellants forcibly entered the house of the complainant to withdraw the complaint against appellant's son – Jitendra Gupta. On the report, offence under Section 451, 506 of IPC and also Section 3 (2) (v) of the Act of 1989 was registered. The appellant's application for grant of anticipatory bail was moved stating that it is a case of false implication and no *prima facie* case under Section 3 (2) (v) (a) of the Act of 1989 is made out. The argument was, however, not accepted and the Court below, in view of bar created under Section 18 of the Act of 1989 rejected bail application as not maintainable. It is this order which is under challenge.

4. Learned counsel for the appellant would argue that though bar under Section 18 of the Act of 1989 ordinarily operate against maintainability of application for grant of anticipatory bail, but in cases of exceptional nature and as held by the Supreme Court in the case of **Prathvi Raj Chauhan v. Union of India and ors., (2020) 4 SCC 727**, anticipatory bail could be granted and there is no absolute bar.

He would submit that if the FIR lodged by the complainant, taken on its face value, all that can be said is that the present appellants entered the house of the complainant to threaten her to withdraw the report lodged against son of Vijay Gupta and nothing more. There is no whisper in the complaint that the alleged criminal overt act was committed for the reason that the complainant belongs to scheduled tribe. Therefore, in such a case, bar would not be applicable. Learned counsel for the appellant placed reliance in the case of **Pavas Sharma v. State of Chhattisgarh and anr.** passed by this Court in Cr.A.No.806/2020. He would next submit that as offence under Section 451 and 506 IPC are bailable in nature, the appellants, at this stage, may be granted bail.

5. On the other hand, learned State counsel opposes prayer and submits that there was an incident in which the complainant had made allegations against one – Jitendra

Gupta, son of appellant – Vijay Gupta that he outraged her modesty and lodged report but thereafter, it alleged that the appellants came to her house and threatened her of dire consequences if the report is not withdrawn. He submits that it was fully known to the appellants that the complainant belongs to scheduled tribe. Therefore, the act of the appellant in entering into the house and administering threat and compelling to withdraw the complaint would *prima facie* make out offence not only under Section 451 and 506 of IPC but it would also be an aggravated form of offence under Section 3 (2) (v) (a) of the Act of 1989 because offence under Section 506 IPC is included in the schedule appended to the Act of 1989.

6. The entire complaint / report if read as it is *prima facie* only reflected upon the allegations that the appellants entered the house of the complainant and threatened her to withdraw the complaint made by her against Jitendra Gupta S/o appellant – Vijay Gupta. In the entire complaint, there is nothing to show that the alleged act of threatening by entering the house of the victim was for the reason that she belong to scheduled tribe. The fact that the prosecutrix belong to scheduled tribe would not make out a *prima facie* case of offence under Section 3 (2) (v) (a) of the Act of 1989 in view of observations made by this Court in the case of **Pavas Sharma** (supra) where judgment of the Supreme Court in the case of **Prathvi Raj Chauhan v. Union of India and others, (2020) 4 SCC 727, Khuman Singh v. State of Madhya Pradesh, AIR 2019 SC 4030** and **Dinesh alias Buddha v. State of Rajasthan (2006) 3 SCC 771** were examined by this Court to hold that the provisions contained under Section 3 (2) (v) (a) of the Act of 1989 being *pari materia* Section 3 (2) (v), difference being only of the degree and gravity of offence, unless a *prima facie* case is made out that commission of offence was for the reason that the victim belong to reserved category, provisions contained under Section 3 (2) (v) (a) of the Act of 1989 would not be attracted. The view taken by this Court in the aforesaid case applies in the present case also. Though Section 451 IPC is not included in the schedule appended to the Act of 1989, Section 506 IPC is included therein. But then, in order to make out a *prima facie* case, there

has to be something in the complaint or in the material circumstances attending the alleged commission of offence that the reason for commission of offence was that the victim belong to scheduled caste and scheduled tribe. Since the only offence under Section 3 (2) (v) (a) of the Act of 1989 brings the case within the bar under Section 18 of the Act of 1989 and the other offence under Section 451 and 506 IPC are otherwise bailable in nature, in the opinion of this Court, present is a fit case for grant of anticipatory bail to the appellants in view of following observations made by the Supreme Court in the case of **Prathvi Raj Chauhan** (supra) -

“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 Sections 18 and 18-A (i) shall not apply. We have clarified this aspect while deciding the review petitions.

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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.”

7. Accordingly, the impugned order passed by the Court below is set aside. It is directed that in the event of arrest, the appellants shall be released on bail on each of them furnishing a personal bond in the sum of Rs.25,000/- with one local surety for the

like sum to the satisfaction of the arresting officer and they shall abide by all the following terms and conditions:-

- (i) that the appellants shall make themselves available for interrogation by a Police 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 them from disclosing such facts to the Court or to any Police Officer.
- (iii) that the appellants shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that the appellants shall appear before the Trial Court on each and every date given to them by the said Court till disposal of the trial.

Certified copy as per rules.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge