

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.974 of 2020**

1. Pratap Singh S/o Shri Bhagwan Singh Aged About 22 Years R/o Village-Dhanudera (Correct Village's Name Dhanuardera), P.S. Chakardhar Nagar, Tah. And Distt. Raigarh (Chhattisgarh), District : Raigarh, Chhattisgarh
2. Jaggu Singh S/o Shri Niranjana Aged About 30 Years R/o Village-Dhanuwadera (Correct Village's Name Dhanuardera), P.S. Chakardhar Nagar, Tah. And Distt. Raigarh (Chhattisgarh), District : Raigarh, Chhattisgarh

---- Appellants**Versus**

- State Of Chhattisgarh Through Police Station- Chakardhar Nagar, Distt. Raigarh (Chhattisgarh), District : Raigarh, Chhattisgarh

---- Respondent**CRA No.979 of 2020**

- Bhagwan Singh S/o Shri Chhatrapal Singh Aged About 50 Years R/o Village Dhanaardera (Correct Villages Name Dhanuardera), P.S. Chakardhar Nagar, Tahsil And District Raigarh, Civil And Revenue District Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through Police Station Chakardhar Nagar, District Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh

---- Respondent

For Appellants	:	Shri M.K. Sinha, Advocate
For Respondent/State	:	Smt. Fouzia Mirza, Additional AG

Single Bench: Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board**12/03/2021

Heard.

1. The aforesaid two bail applications (Cr.A.No.974 & 979 of 2020) are being disposed off by a common order as both bail applications arise out of the same crime number.

2. The applicants are apprehending their arrest in connection with Crime No.193/2020 registered at Police Station Chakradhar Nagar, District Raigarh for the offence punishable under Section 294, 323, 341, 506, 34 of the IPC and Section 3(1)(द,घ) and 3(2)(v) of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (In short "the Act of 1989"). The appellants had applied for grant of anticipatory bail before the Court below but the Court below rejected bail application of the appellants taking into consideration the bar created under Section 18 of the Act of 1989 and opining that as the allegations against the appellants are of commission of offences not only under IPC, but also under Section 3(1)(द,घ) and 3(2)(v) of the Act of 1989, the bail application is not maintainable. Aggrieved by this rejection order, the appellants have filed this appeal.

3. Prosecution case is that while the complainant belonging to the Scheduled Tribe category was transporting sand in the tractor, he was obstructed by the present appellants and diverted to another place, abused, assaulted as also threatened by saying that the complainant had got false seizure of sand belonging to the accused effected.

4. Learned counsel for the appellants would argue that if entire complaint as has been lodged by the complainant is taken on its face value, there is no ingredients of commission of offence under Section 3(1)(द,घ) and 3(2)(v) of the Act of 1989 for want of specific allegation that all these was done for the reason that the victim belonging to the Scheduled Tribe Category. Relying upon the various orders passed by this Court in the case of Cr.A.No.812 of 2020 (**Krishna Yadav and another vs. State of CG**) decided on 05-02-2021, it is submitted that in such a case, bar under Section 18 of the Act of 1989 would not come in the way, even if the offences, which are alleged to have committed are contained in the schedule appended to the Act of 1989, therefore, no prima facie case is made out and the appellants are entitled to benefit of anticipatory

bail notwithstanding bar created under Section 18 of the Act of 1989.

5. On the other hand, learned counsel for the State would submit that the complaint clearly shows that the appellants while abusing, intimidating and assaulting fully knew that the complainant belongs to the Scheduled Tribe Category and even then, such criminal overt act alleged to have committed, makes out a prima facie case against the appellants and that would bar application for grant of anticipatory bail in view of the provisions contained under Section 18 of the Act of 1989.

6. If the complaint as alleged against the present appellants is read as it is, the only allegation therein is while the victim was carrying sand in a tractor, he was intercepted, abused and diverted to another direction, dragged away and given assault with intimidation and abuses. From the entire complaint, on prima facie consideration, it cannot be said that alleged criminal overt act was for the reason that the victim belonged to Scheduled Tribe Category. According to the complainant himself, this was done because the complainant was instrumental in getting sand, which was being transported by the appellants, seized by the authorities. This Court also finds that though, there are allegation of commission of offences under Sections 294, 506, 323, 341 and 34 IPC, which are bailable offences, it is difficult to prima facie hold that either threat or assault was only for the reason that the victim belonged to ST category.

7. The provision contained under Section 3 (2) (v) of the Act had come up for consideration in interpretation of the Supreme Court in the case of **Khuman Singh Vs. State of Madhya Pradesh** (AIR 2019 SC 4030). In that case, assault was made on the deceased, who belonged to reserved category. While altering the conviction under Section 302 IPC to that of Section 304 Part-II IPC, conviction under Section 3 (2) (v) of the Act of 1989 was set aside on following consideration :-

“11. The next question falling for consideration is whether the conviction under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act can be sustained? Deceased belongs to “Khangar” Caste and in a wordy altercation, appellant-accused is said to have called the deceased by his caste name “Khangar” and attacked him with an axe. Calling of the deceased by his Caste name is admittedly in the field when there was a sudden quarrel regarding grazing of the buffaloes.

12. From the evidence and other materials on record, there is nothing to suggest that the offence was committed by the appellant only because the deceased belonged to a Scheduled Caste. Both the trial court and the High Court recorded the finding that the appellant-accused scolded the deceased Veer Singh that he belongs to “Khangar” Caste and how he could drive away the cattle of the person belonging to “Thakur” Caste and therefore, the appellant-accused has committed the offence under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Section 3 of the said Act deals with the punishments for offences of atrocities committed under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Section 3(2)(v) of the Act reads as under:-

“Section 3 – Punishments for offences of atrocities –

(1)

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

....

(v) commits any offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property knowing that such person

is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine”.

The object of Section 3(2)(v) of the Act is to provide for enhanced punishment with regard to the offences under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property knowing that the victim is a member of a Scheduled Caste or a Scheduled Tribe.

13. In *Dinesh alias Buddha v. State of Rajasthan* (2006) 3 SCC 771, the Supreme Court held as under:-

“15. Sine qua non for application of Section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of Scheduled Castes and Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not case of the prosecution that the rape was committed on the victim since she was a member of Scheduled Caste. In the absence of evidence to that effect, Section 3(2)(v) of the Atrocities Act been applicable then by operation of law, the sentence would have been imprisonment for life and fine.”

As held by the Supreme Court, the offence must be such so as to attract the offence under Section 3(2)(v) of the Act. The offence must have been committed against the person on the ground that such person is a member of Scheduled Caste and Scheduled Tribe. In the present case, the fact that the deceased was

belonging to “Khangar”-Scheduled Caste is not disputed. There is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore, the conviction of the appellant-accused under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not sustainable.”

8. Section 3 (2) (v) of the Act of 1989 is *pari materia* provision contained in Section 3 (2) (va) of the Act of 1989, which provides for enhanced sentence in respect of grave offence as compared to those stated in Section 3 (2) (va) of the Act. In these provisions, there is nothing to show nor any specific recital that offence would be attracted only when it is committed because the victim belonged to reserved category. However, by process of interpretation, the Supreme Court in the case of **Khuman Singh** (supra), relying upon its earlier decision in the case of **Dinesh alias Buddha Vs. State of Rajasthan** (2006) 3 SCC 771, held that offence under Section 3 (2) (v) of the Act would not be made out because there is nothing to suggest that the offence was committed only because the victim belonged to scheduled caste. This aspect has been dealt with by the Supreme Court in the case of **Dinesh** (supra). In that case, it was held that *sine qua non* for application of Section 3 (2) (v) of the Act is that an offence must have been committed against a person on the ground that such person is a member of Scheduled Castes and Scheduled Tribes. In that case, it was found that there was no evidence to establish that requirement. In the absence of evidence to the effect that the rape was committed on the victim since she was a member of SC/ST, Section 3 (2) (v) of the Act was held inapplicable.

9. The aforesaid view of the Supreme Court makes out a settled legal position that even in cases where enhanced punishment is provided as contained under Section (3) (2) (va) of the Act, in order to convict a person in

that provision, the prosecution is required to show that the offence was committed on the person belonging to reserved category on the ground that the person was member of the reserved category and where there is no such material, offence under Section 3 (2) (va) of the Act cannot be said to have been prima facie made out. In other words, offence under Section 3 (2)(va) of the Act would be prima facie made out only when the allegation by the victim is that victim was assaulted, abused or threatened on the ground that he/she belonged to reserved category or the circumstances in which the incident happened, it could be prima facie gathered that the only operative reason for threat or assault was that the victim belonged to reserved category. In the present case, if the entire complaint/FIR read as it is, prima facie, it is a simple dispute between two groups. FIR lodged by the victim does not show that the operative reason for interception, threat, assault was because the victim belonged to scheduled tribe.

10. Therefore, in view of the decisions of the Supreme Court in the case of **Dinesh, Khuman Singh (supra)** and **Prathvi Raj Chauhan vs. Union of India & Ors., (2020) 4 SCC 727**, present is a case of exceptional nature and, therefore, the appellants are entitled to benefit of anticipatory bail notwithstanding the bar created under Section 18 of the Act.

11. In view of the above, impugned order passed by the Court below cannot be sustained and, therefore, set aside. The aforesaid two appeals (Cr.A.No.974 & 979 of 2020) are accordingly allowed and 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/- along with one local surety for the like amount to the satisfaction of the arresting officer, with following further conditions that:-

- (i) the appellants shall make themselves available for interrogation by the police officer as and when required;
- (ii) the appellants 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;

Certified copy as per rules.

SD/-
(Manindra Mohan Shrivastava)
Judge