

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1014 of 2020**

- Vishal Agrawal S/o Late Jai Prakash Agrawal, Aged About 28 Years R/o Mahamaya Road Near Samlaya Mandir Ambikapur, P.S. And Tahsil Ambikapur, District Surguja Chhattisgarh

---- Applicant**Versus**

- State Of Chhattisgarh Through Police Station AJK Ambikapur, District Surguja Chhattisgarh

---- Respondent

For Applicant	:	Shri A.K.Yadav, Advocate
For State	:	Smt. Fouzia Mirza, Addl. Adv. Gen.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****21/01/2021**

This appeal arises out of order dated 01/12/2020 by which, applicant's application for grant of anticipatory bail has been rejected.

2. The appellant is apprehending his arrest in connection with Crime No.19/2018 registered at Police Station – A.J.K. Ambikapur, District – Surguja (CG) for alleged commission of offences under Section 294, 506, 420 of IPC and Section 3 (1) (r) (s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act of 1989').

3. The complainant lodged a report against the appellant alleging commission of offence under Section 294, 506, 420 of IPC and Section 3 (1) (r) (s) of the Act of 1989. In the complaint, it was stated that the appellant had borrowed huge amount from the complainant and that a part was returned and part of loan was adjusted towards credit amount against purchase of ration from the shop of the accused, remaining amount

was not being returned by the accused despite demand and when the complainant went to the accused, insisted for returning of the balance amount, the appellant threatened, abused and used caste language with intention to intimidate and humiliate the complainant who belongs to scheduled tribe.

Learned Court below rejected the application holding that in view of the nature of allegations and it being a case of registration of offence under the Act of 1989, bar under Section 18 would come into play and application for anticipatory bail would not be maintainable. It is against this order, this appeal has been filed.

4. Learned counsel for the appellant would submit that the contents of FIR and case diary statements, even if taken on its face value, essential ingredients under Section 3 (1) (r) or 3 (1) (s) of the Act of 1989 are not made out. Therefore, in view of law laid down by the Supreme Court in the case of **Prathvi Raj Chauhan v. Union of India and ors., (2020) 4 SCC 727**, application for grant of anticipatory bail would be maintainable and even anticipatory bail could be granted to the appellant despite bar under Section 18 of the Act of 1989.

5. On the other hand, learned counsel for the State opposes bail by submitting that the complainant belongs to scheduled tribe and he has made serious allegations that the appellant used caste language to insult and intimidate the complainant and there are several case diary statements to show that the appellant used caste words on the complainant.

6. In the present case, a bare perusal of the FIR and various case diary statements would reflect that there arose a dispute with regard to return of alleged loan by the accused / appellant to the complainant. According to the complainant, the accused / appellant had taken huge amount from him and that a part has been returned and a part has been adjusted towards payment of price of ration from the shop of the accused by the complainant and balance amount was not repaid to the complainant despite repeated requests. According to the complainant, as has been stated in the FIR and case diary statements, when he went to the house of the appellant, the accused /

appellant used caste words and abusive languages. On *prima facie* consideration, it is found that neither in the FIR nor in their statement, there is any statement that such caste abusive languages were hurled and abused against the complainant by the accused / appellant, in any place within public view.

7. In order to *prima facie* come to the conclusion that offence under Section 3 (1) (r) (s) of the Act of 1989 is made out, it has to be atleast alleged that intentional insult or intimidation with intent to humiliate a member of scheduled caste or scheduled tribe happened in any place within public view or that abuses were hurled in any place within public view. If there is no allegation of such alleged criminal overt act taking in any place within public view, it cannot be said that *prima facie* case is made out in which, if proved, may lead to conviction.

“6. As far as maintainability of the bail application is concerned, the Hon'ble Supreme Court in a recent judicial pronouncement in the case of **Prathvi Raj Chauhan** (supra) had occasion to consider the maintainability of Section 438 Cr.P.C. application on the face of Section 18 of the Act of 1989. It was held as below :

“10. Concerning the applicability of provisions of Section 438 Cr.P.C, it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a *prima facie* case for applicability of the provisions of the Act of 1989, the bar created by Section 18 and 18(A)(i) shall not apply. We have clarified this aspect while deciding the review petitions. ”

32. 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. Therefore, in appropriate cases, benefit of anticipatory bail could be

admitted to the appellant and there is no absolute bar.

8. In view of above consideration, present case certainly falls in the category of exceptional cases as spelt out herein above in the law laid down by the Supreme Court in the case of **Prathvi Raj Chauhan (supra)**.

Learned Court below seems to have mechanically rejected the application without advertng to legal aspect as to whether the complaint taken on its face value, *prima facie* case of commission of offence under Section 3 (1) (r) (s) of the Act of 1989 is made out. For that reason, the impugned order suffers from apparent error and perversity and deserves to be set aside and is accordingly set aside.

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

- (i) that the appellant 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 the appellant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that the appellant 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