

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 992 of 2020**

- Sonai Chand Son Of Shopilal Aged About 50 Years Caste Panika, occupation Service, Resident Of Village Dakaipara, Police Station Patna, Tehsil Baikunthpur, District Korea, Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh

---- Petitioner**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station Ajak, Baikunthpur, District Korea, Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh

---- Respondent**CRA No. 23 of 2021**

- Ashish Kumar S/o Sonai Chand, Aged About 23 Years Caste Panika, R/o Village Dakaipara, Police Station Patna, District Korea Chhattisgarh, District : Koriya (Baikunthpur), Chhattisgarh

---- Petitioner**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station Ajak, Baikunthpur, District Korea Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh

---- Respondent

For Appellants	:	Shri V.K. Sahu, Advocate
For Respondent/State	:	Smt. Fouzia Mirza, Additional AG
For Objector	:	Shri G.P. Shukla, Advocate

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

Heard.

1. The aforesaid two bail applications (Cr.A.Nos.992 of 2020 & 23 of 2021) are being disposed off by a common order as both bail applications arise out of the same crime number.
2. The appellants are apprehending their arrest in connection with Crime No.39/2020 registered at Police Station AJAK, District Koriya for the offence

punishable under Section 294, 506 of the IPC and Section 3(1)(द,घ) 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) 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 going on the road, the appellants hurled abuses by using caste words with the remark that the shop of the victim was brought to close.

4. Learned counsel for the appellants would argue that even if entire allegations as contained in the FIR and other submissions are taken as it is, there is no ingredients of commission of offence under Section 3(1)(द,घ) of the Act of 1989 for want of specific allegation that all this was done for the reason that the victim belonged to Scheduled Tribe Category. He would submit that the allegations do not amount to allegation of the nature that the hurling of abuses was done with an intention to humiliate for the reason that the victim belonged to Scheduled Tribe Category. He would lastly submit that it is a case of trivial dispute, hurling of abuse and threat, for which, other offences, which are bailable offences, registered against the appellants. As prima facie case is not made out for commission of offence under Section 3(1)(द,घ) of the Act of 1989, bar under Section 18 of the Act of 1989 would not come in the way and the appellants are entitled to benefit of anticipatory bail.

5. On the other hand, learned counsel for the State would submit that the complaint clearly shows that while the complainant was going on a road, he was

threatened and abuses were hurled and even caste name were also used disclosing that the accused were instrumental in getting the shop closed, taken together, prima facie case of commission of offence is made out against the appellants that all this was done with an intention to humiliate the victim, because he belonged to the Scheduled Tribe Category 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 entire allegations as contained in the FIR is read as it is, it reveals that the appellants hurled abuses to the complainant, though, caste word has been used, on prima facie consideration, it does not show that all this was done because the complainant belonged to Scheduled Tribe Category. There is no allegation that the shop of the complainant was brought to close for the reason that he belongs to Scheduled Tribe Category or that the accused declared that the shop will not be allowed to run by the complainant for the reason that he belongs to Scheduled Tribe 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.992 of 2020 & 23 of 2021) 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