

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1016 of 2020

- Mayaram S/o Ramdas Aged About 38 Years Caste – Mahra R/o Village Balikonta, Police Station Parpa, Tahsil Jagdalpur, District – Bastar, Chhattisgarh

---- Appellant

Versus

- State of Chhattisgarh Through Station House Officer, P.S. SC/ST Welfare, Jagdalpur, District – Bastar, Chhattisgarh

---- Respondent

For Appellant	:	Mr. Varun Sharma, Adv.
For Respondent/State	:	Mr. Mateen Siddiqui, Dy. A.G.
For Objector/Complainant	:	Mr. Pravin Kumar Tulsyan, Adv.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order on Board

18.02.2021

1. This appeal arises out of the order dated 07.12.2020 by which, learned Special Judge, (SC/ST Act), Jagdalpur, District – Bastar has rejected application for grant of anticipatory bail filed by the appellant holding that the application is not maintainable under Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
2. The appellant is apprehending his arrest in connection with Crime No.02/2020 registered at Police Station – SC/ST Welfare, Jagdalpur, District – Bastar (CG) for alleged commission of offences under Sections 294, 34, 506(B) 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. Learned counsel for the appellant would argue that the prayer for anticipatory bail was made in exceptional circumstances to prevent misuse of the provisions of the Act of 1989, because according to the appellant no case is made out even if the entire allegations of fact stated in the complaint are taken on its face value. It is argued that in view of the recent judicial pronouncement of Supreme Court in the case of **Prithvi Raj Chauhan Vs. Union of India and ors. (2020) 4 SCC 727**, present is a case of exceptional nature and therefore bar under Section 18 of the Act of 1989 would not come far in the way.

This legal aspect was not taken into consideration by the Court below while rejecting the bail application.

4. On the other hand learned counsel for the State and Objector would submit that the background of the case is that the appellants were illegally cultivating an agricultural land which was given to their father as Kotwar of the Village. Since appellant's father died, the appellant had no authority to cultivate the land. When the villagers including complainant reached at the spot advising the appellant and his brother not to cultivate the land, the appellant and co-accused started abusing and threatening. They first used the word "*Bhadra Adivasi*" followed by abusive words to resist, therefore, this *prima facie* shows that the threat and abuse given by the appellant was with intention to humiliate the complainant in a place within public view because he belongs to Scheduled Tribe and as such a *prima facie* case is made out and therefore the bar under Section 18 would come into play and the application has rightly been rejected by the Court below as not even maintainable.

5. I have heard learned counsel for the parties and also seen the contents of the complaint and other statements recorded on the basis of which FIR has been registered against the appellant.

The complaint, read it is, reveals that the appellant and his brother are alleged to be cultivating a land which were given to their father Ramdas as service land in his capacity as Kotwar and later on, Ramdas resigned in 2019. The appellant and other co-accused were not given any authority to cultivate the land. It is further alleged that it is the complaint that when this fact was complained to the authorities, the villagers started raising objection against appellant and his brother illegally cultivating the land and in this connection, they reached at the spot and asked the appellant and co-accused not to cultivate the land and at this, the appellant and co-accused got enraged started hurling abuse and used the word "*Bhadra Adivasi*". The aforesaid contents of the complaint, on *prima facie* consideration does not show that such abuse and use of words was hurled by the appellant to intentionally insult or intimidate because the complainant belong to a reserve category. The circumstance revealed from the complaint that the complainant himself along with other villagers had reached at the spot and offered resistance to appellant cultivating the land and therefore the dispute arose. Similar statement have been recorded by even by the persons who are said to be present at the spot. Therefore, *prima facie* it appears that the origin of the dispute was not because the appellant stopped the complainant but when the complainant started resisting appellants' activity over an agricultural land which earlier was held by the appellants' father as Kotwar and which the appellant claim, whether rightly or wrongly.

6. Ordinarily bar under Section 18 of the Act of 1989 would come into

play in the matter of application for grant of anticipatory bail by a person who is alleged to have committed offence under Section 3 of the Act of 1989. However, later on, the Supreme Court has considered this aspect as to under what limited and exceptional circumstances, bar may not operate against grant of anticipatory bail in the case of **Prithvi Raj Chauhan Vs. Union of India and ors. (2020) 4 SCC 727** wherein it was held as under :

“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.

.....

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.”

If the present case is examined in the light of the aforesaid judgment, even if the entire material is taken on its face value, *prima facie* case is not made out for commission of offence under Section 3-1 (R-S) of the Act of 1989. The other offences which have been alleged against the appellant are bailable in nature, therefore, the present case in the considered opinion of this Court is a case of exceptional nature and

within the four corners of the category of cases where benefit of anticipatory bail could be granted despite bar under Section 18 of the Act of 1989.

The learned Court below did not examine the present case by applying aforesaid principles of law laid down by the Supreme Court in the **Prithvi Raj Chauhan** (supra), therefore, the impugned order is clearly illegal and therefore set aside. The appellant application for grant of anticipatory bail is, accordingly, allowed.

7. It is directed that in the event of arrest of the appellant on accusation of offence under Section 3 (2) (v) of the Act of 1989, the appellant be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- with two local sureties 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 fact 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