



NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 389 of 2023

- Saurabh Gupta, S/o Ramesh Gupta, Aged About 20 Years, R/o Village Rahaud, Thana Shivrinarayan, District - Janjgir Champa (C.G.).
---- **Appellant**

Versus

- State of Chhattisgarh, Through Police Station - Shivrinarayan, District - Janjgir Champa (C.G.).
---- **Respondent**

For Appellant : Shri Pramod Shrivastava, Advocate
For Respondent/State : Shri Gurudev I. Shrana, Government Advocate

Hon'ble Shri Justice Rakesh Mohan Pandey
Order on Board

31.03.2023

1. This appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Act, 1989') has been filed against the order dated 18.01.2023 passed by Special Judge (Atrocities) Janjgir, District-Janjgir-Champa (C.G.) rejecting the application under Section 438 of the Cr.P.C. in connection with the Crime No. 397/2021, registered at Police Station – Shivrinarayan, District- Janjgir-Champa for the offence punishable under Sections 147, 149, 294, 506, 323 of the IPC and Section 3(2)(v-a) of the Act, 1989.
2. Today, the complainant appeared before this Court through video conferencing from DLSA, Janjgir-Champa and he has raised serious objection in grant of bail to the appellant.
3. Case of the prosecution, in brief, is that on 15.10.2021, the appellant and other co-accused persons assaulted the complainant and his family members.
4. Learned counsel for the appellant would submit that similarly situated co-accused persons have already been granted anticipatory bail by the co-ordinate Bench of this





Court vide order dated 08.08.2022 & 13.10.2022 in CRA Nos. 960/2022 & 1372/2022. He would further argue that the ingredients of the offence alleged are not attracted as there is no mention of caste related abuses in statement of the complainant recorded u/s. 161 of the Cr.P.C. He would place reliance on the decision of the Hon'ble Supreme Court in the matter of **Prathvi Raj Chauhan v. Union of India and others** reported in **{(2020) 4 SCC 727}** to buttress his submission.

5. Learned counsel for the State would oppose the above prayer.
6. I have heard learned counsel for the parties and perused the case diary.
7. In the matter of **Prathvi Raj Chauhan** (Supra), Hon'ble Supreme Court held in para 7 & 11 which is reproduced hereinbelow-

“7. This Court in **Vilas Pandurang Pawar and Anr. v. State of Maharashtra and Ors., (2012) 8 SCC 795**, has observed thus:

“10. The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no court shall entertain an application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. The court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence.”





“11. Concerning the applicability of provisions of section 438 Cr.PC, 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 18A (i) shall not apply. We have clarified this aspect while deciding the review petitions.”

8. Considering the written complaint so made and other material collected by the prosecution and also keeping in view the decision of the Hon'ble Supreme Court in the matter of **Prathvi Raj Chauhan** (supra), I am inclined to allow this criminal appeal, accordingly, the appeal is allowed and order passed by the learned Special Judge dated 18.01.2023 is hereby set-aside.

9. It is directed that in the event of the appellant executing a personal bond for a sum of **Rs.50,000/-** with one surety of like sum to the satisfaction of the concerned arresting officer, he shall be released on anticipatory bail on following conditions:-

(a) he shall make himself available for interrogation by a police officer as and when required;

(b) 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; and

(c) he shall not act in any manner which will be prejudicial to fair and expeditious trial.

The observation made hereinabove is for the purpose of deciding this appeal only, learned trial Court shall decide the case on its own merits.

Sd/-
(Rakesh Mohan Pandey)
Judge