
(2001) 09 CHH CK 0005
In the Chhattisgarh High Court
Case No : M. Cr. C. No. 1750 of 2001 (B)

Daneshwar Kashyap and Others

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 07-09-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 18, 3(1)(x)

Citation : (2003) 1 MPJR 1

Hon'ble Judges : R.S. Garg, J

Bench : Division Bench

Advocate : J.R. Verma, for the Appellant; Ranveer Singh, G.A., for the Respondent

Judgement

R.S. Garg, J.

Heard. On 28.6.2001 the learned Judicial Magistrate First Class. Baloda Bazar found that in the challan papers somebody had scored-off Section 3(1)(x) of the S.C. & ST. (Prevention of Atrocities) Act but as nobody has put his initials it was held necessary to see whether a charge u/s 3(1)(x) of the Act could be framed against the applicants or not. While so directing the Judicial Magistrate First Class also observed that in case offence u/s 3(1)(x) of the Act is found against the applicants, then the earlier bail granted in their favour in relation to I.P.C. offences may be cancelled. Before anything further could be done by the Judicial Magistrate First Class, the applicants who apprehended that they were likely to be taken into custody made an application u/s 438 Cr. P.C. to the Additional Sessions Judge, Baloda Bazar for grant of anticipator) bail. The learned Addl. Sessions Judge, Bolada Bazar rejected the application mainly on the ground that in view of the bar contained under the Act bail could not be granted. The applicants have approached this Court and are seeking an order under Sec. 438 Cr. PC.

Shri Verma, learned counsel for the applicants, submits that if the trial court holds that an offence punishable u/s 3(1)(x) of the Act is made out, then it shall immediately cancel the bail and would take the applicants into custody which would adversely affect the applicants, therefore, this Court must grant an order in favour of the applicants.

On the other hand, learned counsel for the State, submits that in view of the bar contained u/s 18 of the Act, the applicants are not entitled to any order in their favour.

In the opinion of this Court, unless somebody holds that an offence u/s 3(1)(x) of the Act prima facie is made out, it was not necessary for the lower court to reject the application u/s 438 Cr. P.C. The apprehension expressed by the Applicants cannot be said to be absolutely unfounded but present was not a stage where an application u/s 438 Cr. P.C. could be rejected unceremoniously by the lower court.

Without entering into the merits of the matter, I propose to dispose of this petition with the following directions:

- (i) In case the trial court holds that an offence u/s 3(1)(x) of the S.C. & S.T. (Prevention of Atrocities) Act is made out, then it may proceed further in the matter but shall not take the applicants into custody for a period of fifteen days, enabling the applicants to make an application before a competent court for anticipatory bail.
- (ii) If against such an order a revision is filed, then the revisional court shall decide the matter in accordance with law and any application filed u/s 438 Cr. P.C. shall be decided on its own merits without being influenced by the earlier order dated 28.6.2001.

The petition is disposed of.