

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 535 of 2015

Poonam Chand Verma Aged About 30 years S/o Kushalram Verma R/o Gaajmarra,
Tahsil Dongargarh, District- Rajnandgaon, Chhattisgarh

---- Applicant

Versus

The State Of Chhattisgarh Through: Thana Dongargarh, District Rajnandgaon,
Chhattisgarh

---- Respondent

For Applicant	:	Shri Parag Kotecha, Advocate
For Respondent/State	:	Shri Satish Gupta, Govt. Advocate

Order On Board

10/07/2015

Heard.

This application under Section 438 of Cr.P.C. has been filed by the applicant apprehending his arrest in connection with Crime No.165/2015, registered in Police Station -Dongargarh, District- Rajnandgaon, for alleged commission of offence under Sections 376 and 493 of the IPC and Section 3 (1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989.

Case of the prosecution is that the applicant was sexually exploiting the complainant, a tribal girl, and ultimately refused to marry her.

Learned counsel for the applicant submits that even according to the report lodged by the complainant there was longstanding affair between them for last more than 5 years. Marriage between the applicant and prosecutrix could not take place because of serious objection of the applicant's parents who ousted the applicant and prosecutrix both from the house and thereafter the prosecutrix has lodged report to exert pressure on the applicant to agree for marriage.

On the other hand, learned counsel for the State submits that even though according to the prosecutrix, there was longstanding affair between the applicant and the prosecutrix, the act of the applicant in refusing to marry prosecutrix shows that the applicant had no intention to marry her and on the false pretext of marriage, he was having sexual intercourse with the prosecutrix all these years. It is also

submitted that as the prosecutrix is a tribal girl , a prima facie case of commission of offence under Section 3 (1) (xi) of the ST & ST Act is also made out as she was sexually exploited. Therefore, in view of bar created under Section 18 of the SC & ST Act, he is not entitle to grant of bail.

Prima facie, the statement of the prosecutrix shows that the applicant and the prosecutrix had a longstanding affair for more than 5 years prior to date of lodging FIR. The prosecutrix has stated in her FIR that when the applicant called her to marry and reside in his house, the parents of the applicant did not accept and applicant and prosecutrix both were ousted, whereafter applicant and prosecutrix went to another station. A meeting was held and then it was decided to go for Court marriage on 1.5.2015 which could not materialize as it is alleged that the applicant finally refused to marry on the ground that the prosecutrix belong to *Mahar* caste.

Taking into consideration the nature of allegation and the background, offence under Section 3 (1) (x) of the Act of 1989 cannot be said to be made out and the bar under Section 18 would not be attracted and the applicant cannot be denied of protection of anticipatory bail in view of the judgments in the cases of **Satyaprakash Vs. State of C.G. {2004 (1) C.G. L.J. 162}** & **Abdul Abbas Vs. State of C.G. {2005 (2) C.G.L.J. 235}**.

The application is accordingly allowed. It is directed that in the event of arrest of the applicant in connection with the aforesaid offence, he shall be released on bail by the arresting officer on his 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 applicant shall make himself available for interrogation by the police officer as and when required;
- (ii) the applicant 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)
J U D G E