

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No.961 of 2015

Vikash Chaubey S/o A.N. Chaubey Aged About 34 Years R/o Rajasva Colony
Bilaspur, Police Station Sarkanda, Bilaspur, Tahsil And District Bilaspur Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through The Station House Officer, Police Station Civil Line
Bilaspur Distt. Bilaspur Chhattisgarh.

---- Respondent

For Applicant	:	Shri Kishore Bhaduri, Advocate.
For Respondent/State	:	Shri Ashok Kumar Swarnkar, Panel Lawyer.

Order On Board

29/09/2015

Heard.

1. The applicant is apprehending his arrest in connection with Crime Case No.362/2015 registered at Police Station- Civil Line, Bilaspur (C.G.) for alleged commission of offence under Section 493, 376, 354 (Gh), 323 of IPC and Section 3(1)(xii), 3(ii) (v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short “the Act of 1989”).
2. Prosecution case is that the applicant entered into an affair with the prosecutrix and sexually exploited her for long time and when at a later stage, the prosecutrix refused to continue with relations, the applicant threatened her and also gave her beating.
3. Learned counsel for the applicant submits that on bare reading of the entire complaint in writing submitted by the prosecutrix, no case of commission of offence under Section 376 and 354 (Gh) is made out. He submits that even according to the prosecutrix who is major, she had a long standing affair and physical relations with the applicant since April, 2013 but the dispute between the applicant and prosecutrix arose after November, 2014 leading to lodging of report on 19th July, 2015. The other allegations of beating the prosecutrix only makes out a case of commission of bailable offences.

4. On the other hand, learned counsel for the State opposes prayer for grant of bail and submits that the nature of allegations show that the applicant had developed relations with the prosecutrix on the assurance that he was a bachelor whereas, he was a married person and when later on, prosecutrix came to know this fact, she attempted to distance herself from the applicant, which the applicant did not accept and insisted to continue the relations. As the prosecutrix belongs to scheduled tribe, the anticipatory application is barred under Section 18 of the Act of 1989.

5. Prima facie the statement of the prosecutrix, who stated to be 24 years of age, shows that she had developed an affair with the applicant since April, 2013, which continued till November, 2014 during which period, the applicant and prosecutrix had sexual intercourse.

6. There is no allegation of the applicant having committed sexual intercourse with the prosecutrix against her wishes and without her consent after November, 2014 though the allegation is that the applicant became violent and insisted to continue relations, there is no allegation of any sexual intercourse.

7. Prima facie in order to constitute an offence under Section 3(1)(xii) of the Act of 1989, there has to be some material on record to show that the applicant was in a position to dominate her will. In the entire complaint, the prosecutrix has not stated as to how the applicant was in a position to dominate her will.

In view of the aforesaid considerations, in my view, particularly when offences which are alleged against the applicant are relating to offences which are bailable in nature, bar under Section 18 of the Act of 1989 would not come in the way so as to deny anticipatory bail to the applicant in view of the orders passed by this Court in **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 allowed.

8. Accordingly, it is directed that in the event of arrest of the applicant in connection with the aforesaid offence, he shall be released on bail 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 and the applicant shall abide by all the following terms and conditions -

- (i) that the applicant 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 facts

to the Court or to any Police Officer.

(iii) that he shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and

(iv) that he shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

It is made clear that the bail is being granted to the applicant on specific condition that he would not make any attempt to threaten or harass the prosecutrix. If there is any such allegation made in future, the bail granted to the applicant shall be liable to be cancelled.

Certified copy as per rules.

Sd/-

Manindra Mohan Shrivastava

J U D G E