

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.Cr.C.(A) No. 1316 /2015

Rupesh Pathak, S/o. Diwakar Pathak, Aged About 30 Years, R/o. Opp. Gurudwara, Beside S.B.I. ATM, Ghuddeva Colony, Police Station Bankimongra, Tahsil Katghora, Distt. Korba, Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh, Through the Station House Officer, P.S. Banki Mongra, Distt. Korba, Chhattisgarh

---- Respondent

For Applicant : Mr. Awadh Tripathi, Advocate.

For Respondent : Mr. Anant Bajpai, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

22/01/2016

1. Apprehending arrest in connection with Crime No.164/2015 registered at Police Station- Banki Mongra, District Korba (C.G.) for the offence punishable under Section 376(D) and Section 3(1)(12) of SC, ST (Prevention of Atrocities) Act, the applicant has preferred this application under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail.
2. As per the prosecution story, in brief, the victim has lodged a report that the applicant on the pretext of marriage committed sexual assault and thereafter when the applicant was pressed for marriage by the prosecutrix, he refused and consequently a report was made.
3. Learned counsel for the applicant submits that the prosecutrix and the applicant were in relationship from 2008 and the prosecutrix was aged about 27-28 years and with her consent the relationships were developed, therefore, it would not amount to a case of rape and since the marriage could not be performed because of the

objection by the family members, the report has been made. He placed his reliance in the order of the co-ordinate Bench passed in M.Cr.C.(A) No.423 of 2015 on 21.05.2015 and in case of *Rajkumar Agrawal v. State of C.G.*, reported in 2007(2) C.G.L.J. 362.

4. Per contra, the learned State counsel opposes the prayer for grant of anticipatory bail.
5. I have heard learned counsel appearing for the parties and perused the case diary.
6. Perused the statement of the prosecutrix wherein she has stated that she was in relation with the applicant from the year 2008 and on the pretext of marriage she was subjected to sexual intercourse and even when they went for performance of Court marriage to a house of an Advocate wherein also she was subjected to sexual intercourse and all the sexual relations were committed on the pretext of performance of marriage and ultimately it is revealed that the applicant has performed marriage with the other girl. Taking into such statement, prima facie, it appears that from the very initial stage, the applicant did not have an intention for marriage, therefore, considering the conduct of the applicant and the statement of the prosecutrix, I am not inclined to extend the benefit of Section 438 of Cr.P.C. to the applicant.
7. Accordingly, the anticipatory bail application filed under Section 438 of Cr.P.C is rejected.

Sd/-
(Goutam Bhaduri)
Judge