

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****M.Cr.C. (A) No. 884 of 2016**

- Om Prakash Darshan S/o Late Harishankar Darshan Aged About 60 Years Occupation Agriculture R/o Village - Bhadripali Police Station Kharsiya Civil & Revenue District Raigarh Chhattisgarh

---- Applicant**Versus**

- State Of Chhattisgarh Through - Station House Officer Police Station - Kharsiya Tahsil Kharsiya District - Raigarh Chhattisgarh

----Non-Applicant

For Applicant:	Ms. Deepali Pandey, Advocate
For Non-Applicant /State:	Mr. Satish Gupta. Government Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****16.08.2016**

1. This is second bail application filed under Section 438 of Cr.P.C. for grant of anticipatory bail to the Applicant who is apprehending his arrest in connection with Crime No. 173/2014, registered at Police Station- City Kotwali, Kharsiya, for the offence punishable under Section 304B read with 34 of IPC
2. The first bail application vide M.Cr.C. (A) No. 812/2014 was rejected by this Court on 15.09.2014. It is trite at this juncture to reproduce the relevant portion of the earlier order passed in the Application for grant of anticipatory bail:-

“Counsel for the applicants prays for withdrawal of this anticipatory bail application with liberty to surrender the applicants before the trial Court and to move an appropriate application for regular bail. She further prays that the Court below may also be directed to consider the regular bail application for the applicants on the same day.

Accordingly, the instant M.Cr.C.(A) is dismissed as withdrawn with liberty to the applicants that in case, the applicants move an application before the trial Court for regular bail, the same, if possible, be considered on the same day.”

3. A brief fact in the present case is that deceased in the instant case - Anita Darshan was married to one Chandrahas Darshan on 02.06.2013. Barely 10 months later the deceased – Anita is said to have died under suspicious circumstances on 27.04.2014. Merg was intimated and on the basis of which F.I.R. was also lodged as Crime No. 173/2014 at Police Station – Kharsia. The charge sheet was filed against the Applicant and other co-accused under Section 304 (B) read with 34 of Cr.P.C. The charge sheet in the instant case was filed before the Court below showing the present Applicant and two other persons as absconding and trial was initiated against the Chandrahas Darshan the husband of the deceased and Hemlata Darshan-grand mother of the husband.
4. The Trial ultimately resulted in the conviction of both the accused persons and against whom an appeal is also pending i.e. Criminal Appeal no. 957/2015 before this Court where while pending the Appeal the accused persons have been released on bail.

5. The present Applicant subsequently meanwhile had filed the application for anticipatory bail which he had voluntarily withdrawn with liberty to surrender before the trial Court with remedy to seek regular bail vide order dated 15.09.2014.
6. However, almost 2 years have elapsed the present Applicant did not think it proper to surrender before the trial Court and seek remedy of grant of regular bail. He has now filed the present second bail application for grant of anticipatory bail. The contention of the Counsel for the Applicant is that on merit she has a very good case in as much as there is no any evidence what so ever for the sake of argument during the trial of accused persons who have been prosecuted - Chandrahas and Hemlata on the basis of which the offence under Section 304B of the IPC can not be attributed against the present Applicant and therefore he deserves to be released on anticipatory bail.
7. She further submits that the ingredients for making out the offence under Section 304 B of IPC would also invoking offence under Section 498(A) of IPC is not made out in the evidences which have been recorded during trial of the accused persons. The demand of dowry has not been established by the prosecution witnesses and in the absence of demand of dowry the case itself would not be made out against the present Applicant.
8. She relies upon the decision of the Supreme Court in the case of **Sunil Bajaj Vs. State of M.P.**¹ in this regard she also relies upon the decision of this Court in case of **Rampyari &**

¹ (2001) 9 SCC 417

Another Vs. State of C.G.² wherein in somewhat similar facts and circumstances, the anticipatory bail was granted by this Court.

9. In addition Counsel for the Applicant also relies upon the decision of the Karnataka High Court in case of **Dyavegowda @ Mogannagowda Vs. State** passed in Criminal Petition No.2542 of 2011 decided on 20.06.2011.

10. A perusal of the facts and circumstances of the case would clearly reveal that the Applicant admittedly had withdrawn his first application for anticipatory bail on 15.09.2014 and that he had made a categorical request to the Court that he intends to surrender before the Court below and move an application for grant of regular bail and the Court below may be directed to consider application for granting regular bail if possible on the same day. This prayer of the applicant was accepted and the anticipatory bail application was dismissed on 15.09.2014.

11. The applicant has not shown any plausible and justified reasons for not acting upon the order granted by the Court while application for anticipatory bail was withdrawn on 15.09.2014. The only ground the applicant has taken in his application since he was medically not well therefore he could not approach the Court below in respect of which he has filed certain prescription along with the anticipatory bail application.

12. A perusal of the medical prescription annexed with the anticipatory bail application shows that all these documents have been prepared on the same day i.e. 03.03.2016 and the

² 2007 (3) CGLJ 535

repeat anticipatory bail before the Court below was filed on 14.03.2016 which shows that the documents were prepared by the Applicant for the purpose of filing anticipatory bail. She further refers to the bail granted to the other accused persons in an appeal in the same case after they have been convicted on the ground that prima facie case under Section 304(B) is not made out therefore the present Applicant also is entitled for being released on anticipatory bail.

13. Learned State Counsel however opposing the application submits that the conduct of the Applicant itself to be viewed seriously in as much as on 15.09.2014 he had withdrawn the bail application with a request to the Court that he may be permitted to surrender before the trial Court and his regular bail application may be considered on the same day. However, though 2 years have passed the Applicant did not either surrender nor has he made any effort to surrender before the Court below and move an application for regular bail. He further submits that in view of the fact that the earlier bail application was withdrawn by the Applicant voluntarily with a liberty of surrendering before the Court below, this second application for anticipatory bail is not maintainable and therefore prays for rejection of the bail application.

14. Having considered the submissions put forth on either side, in the opinion of this Court the judgments referred to by the Counsel for the Applicant so far as the judgment of Chhattisgarh High Court as well as Karnataka High Court are concerned these were the case where anticipatory bail

application were decided on merits at the first instance. These were not the case where repeat anticipatory bail application was being considered and therefore the two judgments are distinguishable. So far as the judgment of the Supreme Court in case of *Sunil Bajaj* (supra) is concerned there is no quarrel in reference to so far as ingredients which are required for making out offence under Section 304-B is concerned. Further the facts remains is that the present Applicant has not come to the Court with clean hands. He tried his luck by moving application earlier for anticipatory bail and for the reasons best known to him he withdrew the application with a liberty to surrender himself before the trial Court and seek grant of regular bail subsequent to his surrender on the same day, if possible, which was accepted by this Court as well. But, the Applicant did not approach the Trial Court for surrender as well as grant of regular bail. Meanwhile, the charge sheet was filed before the Court below showing the Applicant to be absconder and trial was proceeded only against the persons who got arrested. The present Applicant never thought it fit to challenge the filing of the charge sheet at the first instance nor he has challenged act on part of the prosecution in showing the present Applicant as absconder. It appears that the Applicant did not approach the Court for avoiding his arrest all along and now on the basis of documents in respect of the trial of the co-accused persons, he wants liberty of being granted anticipatory bail.

15. This act on part of the Applicant is not appreciable by this Court in as much as apparently it is clear that firstly the Applicant has not approached this Court with clean hands and that he has been avoiding his arrest and secondly he has been shown as absconder and thirdly there is order of conviction against the co-accused persons.

16. For the aforesaid reasons this Court is of the opinion that no strong case has been made out for grant of anticipatory bail, accordingly the anticipatory bail application is rejected.

Sd/-

(P. Sam Koshy)
JUDGE