

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M. Cr. C. (A) No. 288 of 2017**

Rajkumar Sidar S/o Gopal Prasad Sidar, aged about 37 years, R/o Village-
Barbhouna, Police Station- Bhupdeopur, District- Raigarh, Chhattisgarh.

---- Applicant

Versus

State of Chhattisgarh through the Station House Officer, Police Station-
Bhupdeopur, District- Raigarh, Chhattisgarh.

---- Respondent

For Applicant	:	Shri Amit Sharma, Advocate
For Respondent/State	:	Shri U. K. S. Chandel, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order On Board****09.05.2017**

The present application under Section 438 of Cr.P.C. has been filed seeking for grant of anticipatory bail to the applicant apprehending his arrest in connection with Crime No. 30/2017 registered at P.S. Bhupdeopur, District Raigarh (CG) for the offence punishable under Sections 509(B), 506(B) of IPC and Section 67A of IT Act.

At the outset, counsel for the applicant submits that the offences under Sections 509(B) & 506(B) of IPC are bailable and the only offence under Section 67-A of IT Act is non-bailable. It is contended by the counsel for the applicant that there is no ingredient whatsoever so as to attract the offence under Section 67-A of IT Act and the said section has been charged only with a view of harassing the applicant and to put him in custody for an offence ingredients of which are not available with the case diary.

The case, as per the prosecution, against the applicant is that the applicant is a married person and he is said to have some fascination towards the

complainant Smt. Lalita Dansena. The applicant had made a proposal to marry the complainant but when the complainant came to know that the applicant was a married person, he refused to marry and subsequently, she married another person. Meanwhile, the applicant is said to have made phone calls on odd hours on the mobile number of the husband of the complainant and made all sorts of talks with the complainant as well as her husband of his still loving the complainant and that he intends to marry her. The applicant also threatened the husband of the complainant of dire consequences.

A perusal of the entire complaint made on 28.02.2017 does not reflect any sort of ingredients with which an offence under Section 67-A of IT Act, 2000 is made out. The requirement of making out an offence under Section 67-A is that there has to be a publication or transmission in the electronic form of any material which contains sexually explicit act or conduct. In the instant case, there is no such material available in the report of the complainant by which it could be said that there was any sexually explicit act on the part of the applicant having made nor is there any sexually explicit conduct on the part of the applicant to have been made against the complainant so as to attract the provisions of Section 67-A of IT Act.

In view of the same, this Court is of the opinion that present is a case where for the offence under Section 67-A of IT Act, the applicant is entitled to be protected under the provisions of Section 438 of the Code of Criminal Procedure.

In the result, the application u/s 438 Cr.P.C. is allowed. It is directed that in the event of arrest, the present applicant shall be released on bail on his furnishing a personal bond in the sum of Rs.25,000 with one surety in the like sum to the satisfaction of the officer arresting him and he shall abide by all the following terms and conditions:

- (i) that the applicant shall make himself available for interrogation before the concerned Investigating Officer as and when required;
- (ii) that 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/her from disclosing such facts to the Court or to any police officer;

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

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

Sd/-

P. Sam Koshy
Judge

Bhola