

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Criminal Case (A) No.98 of 2017**

- Smt. Sushila W/o Surendra Prasad, Aged About 32 Years R/o North Jhagrakhand, Police Station- Jhagrakhand, District- Koriya, Chhattisgarh.

---- Applicant**Versus**

- State Of Chhattisgarh Through The Station House Officer, Police Station- Jhagrakhand, District- Koriya, Chhattisgarh.

---- Respondent

For Applicant	: Shri Roshan Dubey, Advocate
For Respondent/State	: Shri UKS Chandel, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****20.4.2017**

Heard the matter finally.

2. This application under Section 438 of Code of Criminal Procedure, 1973 (for short 'the Code') has been filed by the applicant apprehending her arrest in connection with Crime No.131/2015 registered at Police Station Jhagrakhand, District Koriya for offence punishable under Sections 363 & 366 of the Indian Penal Code.

3. Learned counsel for the applicant submits that police has filed charge sheet against Rakesh Baiga, Sugreev Baiga and Khundel Baiga for the offence punishable under Sections 363, 366, 376(2) and 368 of the Indian Penal Code and under Sections 5, 6, 9, 10, 16, 17, 19 & 21 of Protection of Children from Sexual

Offences Act, 2012 and the same is pending before First Additional Sessions Judge, Manendragarh as Special Session Trial No.09/15 and in the said case the applicant was arrayed as prosecution witness. During the trial of the said case, Ramkali (PW-3) and prosecutrix (PW-4) (name not mentioned) were examined. Thereafter the prosecution has filed an application before the trial Court under Section 319 of the Code for proceeding against the applicant along with other accused persons as the applicant is appearing to be guilty of offence under Sections 363 and 366 of IPC and prayed that the applicant may be tried along with other accused persons, who are already facing trial. The Court below on 02.01.17 after hearing the application, allowed the same and hold the involvement of the present applicant, sister of main accused Rakesh Baiga, in the offence under Section 363/366 of IPC as she kidnapped the minor prosecutrix and compelled her for illicit sexual intercourse/illicit marriage etc. with the main accused Rakesh Baiga and the Court below directed for issuance of summon to the present applicant. Thereafter the present applicant had preferred an application under Section 438 of the Code on 20.01.2017 for anticipatory bail. The trial Court vide order dated 20.01.2017 held that looking to the evidence of Ramkali (PW-3) and Prosecutrix (PW-4) there was an involvement of the applicant in the matter as aforementioned, hence, not found fit to grant anticipatory bail to the applicant thereby dismissed the said application. Thereafter the applicant has filed the instant application and would submit

that though Ramkali (PW-3) in her statement at para 2 stated that on being asked to the applicant regarding the whereabouts of the prosecutrix, the applicant denied regarding the whereabouts of the prosecutrix and also said that whatever wish the witness (PW-3) can do and also as per the para 7 of the statement of Ramkali (PW-3), the prosecutrix went out with the influence of the applicant. Learned counsel would further submit that the prosecutrix (PW-4) stated in her court statement that she was taken by the applicant to her brother's house at Kotma and the applicant left her at Kotma and returned back. All these aforementioned pieces of evidence are not in the statement of Ramkali (PW-3) recorded under Section 161 of Code and statement of prosecutrix (PW-4) recorded under Sections 161 & 164 of the Code. Prima facie, the above facts are improvement, there are possibility regarding innocence of the applicant. As the prosecution itself not noticed any ingredients of offence committed by the applicant and arrayed her as prosecution witness, hence, she may be granted bail in the event of arrest by the Court below during trial, she will cooperate with the trial and appear as and when directed, the applicant is a woman, prima facie she is not involved in the offence.

4. Per contra, learned counsel for the State opposed the arguments advanced on behalf of the applicant and would submit that on the basis of statement of oath before the Court by Ramkali (PW-3) and prosecutrix (PW-4) prima facie offence under

Sections 363 & 366 IPC are made out against the applicant, hence looking to the seriousness of the offence, the application may be dismissed.

5. Perused the entire material.

6. In the statement of Ramkali (PW-3) recorded under Section 161 Code and statement of Prosecutrix (PW-4) recorded under Sections 161 & 164 of the Code there is no statement regarding the role of the present applicant, the police during investigation not noticed any involvement of the present applicant, the police arrayed the applicant as prosecution witness and as per the prosecution story the prosecutrix was taken by the main accused Rakesh Baiga from the lawful guardianship of her parents. On due consideration of the facts and circumstances, I am inclined to grant anticipatory bail to the applicant.

7. Consequently, application filed under Section 438 of the Code is hereby allowed.

8. It is directed that in the event of arrest by the concerned police/concerned criminal court in connection with above mentioned offence, the applicant shall be released on bail by the officer arresting her on her furnishing a personal bond in the sum of Rs.25,000/- with one solvent surety of the like sum to the satisfaction of the trial Court. The applicant shall cooperate in the trial. If the applicant deliberately without any proper and cogent reason does not cooperate with the trial, the order granting anticipatory bail by this Court shall automatically stand cancelled

without further reference under intimation to the Registry. It is also made clear that this order granting bail to the applicant shall stand cancelled automatically without reference to the Bench by the Court below if (i) the trial Court finds that the applicant suppressed filing or pendency of any other application for grant of bail before this Court or the Hon'ble Apex Court intentionally; and (ii) the applicant is found to be involved in any offence of the like nature and (iii) the trial Court finds that the applicant remains absent without any sufficient and cogent reason. If bail is cancelled automatically in view of the above, the Court below may proceed further under the provisions of law, under intimation.

Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE