

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Criminal Case (A) No.85 of 2017**

1. K. R. Shende S/o Ramchand Shende, Aged About 60 Years R/o Jeenat Bihar, Phes -1 Ganesh Nagar, Chuchuhiyapara, Police Station Sirgitti, Tahsil And District Bilaspur Chhattisgarh
2. Smt. Sarla Shende, W/o K. R. Shende, Aged About 57 Years R/o Jeenat Bihar, Phes -1 Ganesh Nagar, Chuchuhiyapara, Police Station Sirgitti, Tahsil And District Bilaspur Chhattisgarh
3. Rajnikant Shende, S/o K.R. Shende, Aged About 34 Years R/o Jeenat Bihar, Phes -1 Ganesh Nagar, Chuchuhiyapara, Police Station Sirgitti, Tahsil And District Bilaspur Chhattisgarh
4. Harshwardhan Shende, S/o K.R. Shende, Aged About 23 Years R/o Jeenat Bihar, Phes -1 Ganesh Nagar, Chuchuhiyapara, Police Station Sirgitti, Tahsil And District Bilaspur Chhattisgarh

Versus

- State Of Chhattisgarh Through Police Station Sirgitti District Bilaspur Chhattisgarh

---- Respondent

For Applicant	: Shri Sourabh Dangi, Advocate
For Respondent/State	: Shri Wasim Miyan, Panel Lawyer
None for the objector	

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****14.9.2017**

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 applicants apprehending their arrest in connection with Crime No.18/2017 registered at Police Station Sirgitti Distt. Bilaspur (CG) for offence punishable under Sections 3, 4, 8/34 of the Dowry Prohibition Act, 1961 (for short 'the Dowry Act').

3. Learned counsel for the applicants submits that Section 3 of the Dowry Act is for giving or taking dowry, Section 8 of the Dowry Act relates with the procedural aspects of the statute. With this, in the present matter only under Section 4 of the Dowry Act is applicable as the dispute arise prior to the marriage. As per learned counsel for the applicants, marriage of applicant No.3 Rajnikant Shende settled with daughter of complainant Yashwant Rao Onkar. The marriage was fixed to be solemnized on 18.01.2017. Father of the girl/would be bride i.e. complainant lodged a written complaint before the concerned police. As per the said complaint, the applicants demanded a car and Rs. 2 lakh cash. On 23.12.2016 some unknown person threw a letter in front of the house of the applicants (Annexure-A/2). Family members of the bride to be was informed regarding the contents of the letter (AnnexureA/2). Thereafter some unknown person made a threat call from cell phone No.9039325117. The applicants informed the entire facts surfaced in Annexure-A/2 and also about the threat call received as aforementioned on 09.01.2017 itself, which shows their concern for the facts surfaced, the threat and allegation. Instead of replying satisfactorily, the complainant lodged a false report on 10.01.2017 against the applicants for demand of dowry. On 11.01.2017 applicant No.3 also made a written complaint (Annexure-A) to superior Police Officials mentioning the entire facts and also received receipt of the said complaint. But the Police without conducting any enquiry in relation with the written complaint dated 11.01.2017 made by applicant No.3 straightaway started ex-parte investigation against the applicants, as it was required to examine

the truthfulness of Annexure-A/1, written complaint made by applicant No.3. Learned counsel for the applicants would further submit that there was no pre-sitting before the appropriate forum required under the settled law and law as settled by the Hon'ble Apex Court. The applicants got printed the marriage invitation card and also purchased many articles and invested big amount. They never denied for marriage, never demanded any dowry and are ready to conciliate the matter in accordance with law. The applicants are the innocent persons, applicant No.1 is the retired Railway employee, applicant No.2 is house wife, applicant No.3 is a Booking Clerk in Railways and applicant No.4, a student and a player of National Level. They are the permanent residents of the State, they will not abscond, they will not misuse the liberty granted and shall abide all the terms and conditions of the Court. Learned counsel for the applicants draws attention of this Court on the guidelines and directions of the Hon'ble Apex Court in *Arnesh Kumar vs. State of Bihar* (2014) 8 SCC 273 and *Rajesh Sharma & Ors. Vs. State of UP & Anr.* Passed in Criminal Appeal No.1265/2017 arising out of Special Leave Petition (Cri.) No.2013/2017 vide judgment dated 27.7.2017 as the matter is similar as it relates to dowry law. Hence, prayed that on the basis of the guidelines and directions given in the aforementioned matters the applicants may be given benefit of anticipatory bail and also let an opportunity be given for the appearance before the Family Welfare Committee/appropriate forum as already established under the law.

4. Per contra, learned counsel for the State opposed the arguments advanced on behalf of the applicants and would submit

that father of the would be bride lodged a report on 10.01.2017 when the applicants demanded car and cash of Rs.2 lakh as dowry and also threatened that if their demands were not fulfilled, the marriage will not take place. Looking to the entire facts instant bail application may be dismissed.

5. Perused the entire material.

6. On due consideration of the law laid down by the Hon'ble Apex Court in the aforementioned matters and also on perusal of the entire facts, as the written complaint filed by applicant No.3 was not properly enquired regarding its truthfulness, there was no pre-sitting conciliation proceedings, the date of marriage was scheduled to be held after 8 days of the written complaint and also the entirety of the aforementioned law reiterated by the Hon'ble Supreme Court and also as the applicants are with the aforementioned stature, permanent resident of the State, without enquiring the entire aspects of the allegation and other facts shown by the applicants, I am inclined to grant an opportunity to the applicants.

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 applicants shall be released on bail by the officer/trial Court arresting them on their furnishing a personal bond in the sum of Rs.25,000/- each with one solvent surety of the like sum to the satisfaction of the said Court. The applicants shall cooperate in the trial. If the applicants deliberately without any proper and cogent

reason do not cooperate with the investigation, the order granting anticipatory bail by this Court shall automatically stand cancelled by concerned Magistrate having jurisdiction on a complaint by the concerned police without further reference under intimation to the Registry. If the concerned Court having jurisdiction after considering the facts found that the applicants in any way not complied the directions given by this Court the anticipatory bail granted to the applicants shall automatically cancelled without further reference to the Bench. It is also made clear that this order granting bail to the applicants shall stand cancelled automatically without reference to the Bench by the Court below if (i) the trial Court finds that the applicants suppressed filing or pendency of any other application for grant of bail before this Court or the Hon'ble Apex Court intentionally; (ii) the applicants are found to be involved in any offence of the like nature and (iii) the trial court finds that the applicants remain 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