

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Criminal Case (A) No.217 of 2017**

- Naruddin Khan S/o Amaruddin Khan, Aged About 21 Years R/o Village Nonbirra, Police Station & Tahsil Kartala, District Korba Chhattisgarh

---- Applicant

**Versus**

- State Of Chhattisgarh Through The Station House Officer, Police Station Kartala, District Korba Chhattisgarh

---- Respondent

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| For Applicant        | : Shri Jitendra Shrivastava, Advocate |
| For Respondent/State | : Shri Arvind Shukla, Panel Lawyer    |

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**Hon'ble Shri Justice Chandra Bhushan Bajpai****Order On Board****21.7.2017**

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.08/2017 registered at Police Station Kartala, Distt. Korba (CG) for offence punishable under Section 376 of the Indian Penal Code.

3. Learned counsel for the applicant submits that charge sheet is not yet filed, prosecutrix lodged FIR on 11.02.2017 and in the said FIR she had mentioned that she has relation ship with the applicant since 1 ½ years. The prosecutrix is aged about 30 years, she is a major, she never disclosed the facts to anybody and when the marriage of the applicant was fixed with one Rehana Bano, she lodged false FIR so as to obstruct the said marriage. There is no

medical corroboration in favour of the prosecutrix and also in the FIR and the statement of the prosecutrix recorded under Section 161 Cr.P.C. It appears that there is no element of sexual intercourse against the will of the prosecutrix as required under Section 375 of the IPC, hence, prima facie for the purpose of appreciating the matter ingredients of Section 376 of the IPC is nowhere attracted, hence, the applicant may be granted the benefit of anticipatory bail.

4. Per contra, learned counsel for the State opposed the arguments advanced on behalf of the applicant and would submit that in the pretext of marriage, the applicant continuously made physical relationship with the prosecutrix, hence the application for bail may be dismissed.

5. Perused the entire material.

6. After perusal of the FIR, statement of the prosecutrix recorded under Section 161 Cr.P.C., it appears that there is nothing in the said statement and the FIR so as to constitute the element of Section 375 & 376 of the IPC. On due consideration of the entire facts, this is a fit case where benefit of anticipatory bail be granted 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/trial Court arresting him on his furnishing a personal bond in the sum of Rs.40,000/- with one solvent surety of the like sum to the satisfaction of the said Court. The applicant shall cooperate in the trial. If the

applicant deliberately without any proper and cogent reason does 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 applicant in any way not complied the directions given by this Court the anticipatory bail granted to the applicant shall automatically cancelled without further reference to the Bench. 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 (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; (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**