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HIGH COURT OF CHHATTISGARH, BILASPUR

M.Cr.C.(A) No. 455 of 2017

Ashish Hora S/o Nindar Singh Hora, Aged About 41 Years R/o Netura Apartment, Daldal Sivni Road, Mowa, Block No. B, House No. 601-602 Police Station Pandri, Raipur, Tahsil & District Raipur, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through The Police Station Pandri, Raipur, District Raipur, Chhattisgarh.

---- Respondent

For the Applicant : Shri Kashif Shakeel, Advocate.
For the Respondent/State : Shri Anant Bajpai, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

ORDER

15.11.2017

1. Heard on application under Section 438 of the Code of Criminal Procedure, 1973.

2. This is the first bail application filed under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail to the applicant who is apprehending arrest in connection with Crime No. 143 of 2017, registered at Police Station – Pandri, Raipur, District – Raipur, Chhattisgarh for the offences punishable under Sections 376, 294, 323, 506 and 493 of the Indian Penal Code.

3. It is submitted by counsel for the applicant that the applicant has been falsely implicated in this case. The applicant is aged about 41 years and is a

divorcee. Similarly, the prosecutrix in this case is also divorcee, aged about 36 years. On mutual understanding, the applicant and the prosecutrix have lived together for 5 to 6 months in a house owned by the applicant, in live-in relationship and during this relationship both of them had consensual sexual intercourse on various occasions, which does not amount to rape in any manner. Later on, the prosecutrix demanded Rs.10,00,000/- from the applicant trying to take advantage of the situation. When the demand was not fulfilled, then the prosecutrix left the house of the applicant and has lodged FIR against him. The FIR lodged against the applicant is totally false and without any basis. It is also submitted that after passing of sometime the prosecutrix in this case has illegally opened the house of the applicant and stolen cash of Rs.3,10,000/- which was kept in the almirah of the said house. A complaint was made in police station Pandri but no action was taken. Thereafter, an application under Section 156(3) of the Code of Criminal Procedure has been filed before the Court of Judicial Magistrate First Class, Raipur with a prayer to pass an order for lodging an FIR against the prosecutrix in this case. Hence, for these reasons, it is prayed that no case is made out against the applicant for the offences under Sections 376 and 493 of the IPC and rest of the offences which were registered are bailable. Hence, the applicant be benefited with grant of anticipatory bail.

4. Learned State counsel opposes the bail application and the submissions made in this respect. It is submitted that the applicant in this case has obtained consent of the prosecutrix by deceit by putting vermilion on her forehead to convince that marriage was performed between them and believing in the act of the applicant, the prosecutrix submitted herself before the applicant hence, the offence of rape and cohabitation by deceit is

made out. The statement of the prosecutrix under Section 164 of the Cr.P.C. is clearly against the applicant, that he has sexually exploited the prosecutrix on the basis of promise to marry her and refused to marry her. On the basis of the evidence and investigation, the applicant is not entitled for grant of anticipatory bail.

5. Heard counsel for both the parties and perused the case diary.

6. As per the case against the applicant the prosecutrix has lodged FIR against the applicant stating that the applicant allured to marry her and also by keeping her from 16.9.2016 to 23.5.2017 has exploited her sexually, thereafter refused to marry her. It is also stated that when the prosecutrix refused to submit herself, the applicant by putting vermilion on forehead convinced her that they are married and then had sexual intercourse with her. On 23.5.2017, the applicant abused the prosecutrix with filthy words and assaulted her with hands and fists causing injuries to her. After lodging of FIR, medical examination has been conducted. The prosecutrix has made the same narration in her statement under Section 164 of the Cr.P.C.

7. Learned counsel for the applicant has placed reliance on the judgment of the Delhi High Court in the case of **Manoj Bajpai vs. State of Delhi** in **W.P. (Crl) No. 771 of 2014** decided on 21.5.2015, judgment of Bombay High Court in the case of **Shri Kunal Mandaliya vs. State of Maharashtra** in **Cr.W.P. No. 1787 of 2016** decided on 19.12.2016 and on the judgment of Supreme Court in the case of **Prashant Bharti vs. State (NCT of Delhi)** reported in **(2013) 9 SCC 293** in which it has been held by the respective

Courts that during the sexual intercourse cohabitation of the parties in live-in relationship amounts to based on consent hence, no offence of rape is made out in this state of things.

8. Learned State counsel in reply has opposed the aforesaid submission and submitted that the case law cited is not applicable as the case law cited are the orders on petition under Article 226 of the Constitution of India or under Section 482 of the Cr.P.C..

9. Considering all the submissions and the contents of the case diary, it is not disputed that the applicant and the prosecutrix had lived together in live-in relationship, thereafter the prosecutrix has started living separately and consequent to that, lodging of FIR and all the allegations were made. After, considering on the material in case diary, I am of the view that the applicant should be benefited with grant of anticipatory bail.

10. Accordingly, the anticipatory bail application is allowed and it is directed that in the event of arrest of the applicant in connection with the aforesaid offence, he shall be released on bail by the Officer arresting him on executing a personal bond in sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Investigating Officer. He shall also abide by the following conditions:

'(i) that the applicant shall make himself available for interrogation before the 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 them 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/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi