

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MCRC No. 4034 of 2017**

- Santosh Kumar Sahu, S/o Shri Shriram Kumar Sahu, Aged About 30 Years, R/o Palaniari, Police Station Pandatarai, District Kabirdham, Chhattisgarh. Presently R/o Daganiya, Police Station Purani Basti, District Raipur, Chhattisgarh.

---- Applicant**Versus**

- State Of Chhattisgarh Through Police Station Purani Basti, District Raipur, Chhattisgarh.

---- Respondent

For Applicant : Shri Devershi Thakur, Advocate.

For Non-applicant/State : Shri Ashok Swarnkar, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****15.09.2017**

Heard the matter finally.

2. Learned counsel for the applicant would submit that the applicant has been arrested in connection with Crime No.80/2017 on 10/04/2017 by Police Station Purani Basti, Distt. Raipur (C.G.) for the offence under Section 376 of the Indian Penal Code.

3. Learned counsel for the applicant submits that after investigation police had filed charge-sheet which is presently pending before the Chief Judicial Magistrate, Raipur (C.G.) as Criminal Case No. 4892/17 for its committal. Learned counsel for the applicant would submit that in the written complaint statement under Section 161 & 164 of the Code of Criminal Procedure. There is no element which constitutes the offence rape, prosecutrix is aged

about 26 years. It is a case of consent though on the pretext of marriage, but as the provisions of Section 375 along with Section 376 of Indian Penal Code is not attracted on the basis of facts surfaced. Hence, also as the report has been lodged after about 3 years. The applicant will not commit any offence in future, shall abide by terms and conditions as given by the Court, as the trial may take some time, he may be granted on bail till trial.

4. Per Contra, learned counsel for the respondent/State opposes the argument advanced on behalf of the applicant and would submit that on a false a promise of marriage, applicant made physical relation with the prosecutrix and also gave her treatment for the abortion, after alleged pregnancy, looking to the entire facts the MCRC may be dismissed.

5. Perused the entire material.

6. As the applicant is in custody since 5 months and 6 days till date, charge-sheet has been filed, trial may take some time and as submitted that he will not commit any offence in future, in the MLC report nothing has been opined regarding earlier pregnancy or abortion, if any, after perusal by the written complaint, statement under Section 161 & 164 of the Code of Criminal Procedure, it appears that prima-facie. There is no facts regarding rape against her will and consent. After consideration of the entire facts surfaced in the charge-sheet, I am inclined to grant one opportunity to the applicant so that he shall not commit any offence in future and shall remain peacefully in the society without committing any crime.

7. Consequently, the instant MCRC is allowed.

8. The applicant is directed to be released on bail on his

furnishing a personal bond in the sum of Rs.30,000/- with one solvent surety of like some amount to the satisfaction of Committal Court or Trial Court, (C.G.) for his appearance before the said Court regularly as and when directed by the said Court.

9. It is 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; (ii) the applicant does not cooperate in the trial; (iii) the applicant is found to be involved in any offence of the like nature; (iv) the trial Court finds that the applicant remain absent without any sufficient and cogent reason. If bail is cancelled automatically in view of above, the Court below may proceed further under the provisions of law under intimation.

10. In addition, the applicant is directed not to communicate/contact in any manner with prosecutrix, her family members and the witnesses cited in the charge-sheet and any other person concerned or attempt to ask for any favour in the trial directly or indirectly. If so, the injured and the witnesses may report the said act to the trial Judge and if the trial Judge finds after hearing that in any way the applicant directly or indirectly gave pressure for illegal favour in the trial or otherwise, the bail granted to the applicant shall be cancelled without further reference to the bench and the concerned trial Court may take the applicant in custody including other measures as provided under the law.

11. Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
Judge

Deeptijha