

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 4701 of 2017

- Fool Singh S/o Gulab Singh, Aged About 30 Years, R/o Pali, District-Kobra, Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through District Magistrate, Police Station-Pasan, District- Kobra, Chhattisgarh.

---- Non-applicant

For Applicant – Shri Samir Singh, Advocate.

For Non-applicant/State – Shri UKS Chandel, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

17-08-2017

1. Heard the matter finally.
2. Learned counsel for the applicant would submit that the applicant held arrested in connection with Crime No.42/2017 on 14-06-2017 by P.S. Pasan, District- Kobra, C.G. for the offence under Section 376 of the IPC. After investigation police had filed the charge sheet, which is pending before the JMFC Katghora as Criminal Case No.430/17; the matter is not yet committed. Learned counsel for the applicant would further submit that as per the FIR, the date of incident is shown since 2006 till continuously. The FIR is lodged on 11-06-2017, thereby the period of incident shown is about 11 years. Looking to the FIR lodged by the prosecutrix who is a major woman and her statement recorded under Section 164 of the Cr.P.C. and also under Section 161 of the Cr.P.C, it appears that there is no any ingredient as required under Section 375 of the IPC prima facie is surfaced, only word rape is used and as per the entire statement, the relations were made on the pretext of marriage and also as the facts surfaced that the applicant slapped about 7 years ago may be an exaggeration and when the applicant allegedly denied to marry and thereafter when the prosecutrix went to the house of the applicant he ran away from his

house, thereafter the prosecutrix gave the written complaint to the concerned police. Looking to the entire facts, as the factum of rape is not attracted and as submitted, the applicant will not commit any offence in future, the applicant may be enlarged on bail; also there is no earlier criminal antecedent of the applicant.

3. Per contra, learned counsel for the non-applicant/State opposed the argument advanced on behalf of the applicant on the basis of written report, statement under Section 161, 164 of the Cr.P.C., though fairly conceded that there is no any earlier criminal antecedent of the applicant.

4. Perused the entire material.

5. As the applicant is in custody since 2 months and 3 days till date till date, charge sheet has been filed, trial may take some time, there is no any earlier criminal antecedent, and looking to the manner as the incident happened as narrated in the FIR, Section 161 of the Cr.P.C. and specifically the statement recorded under Section 164 of the Cr.P.C., prima facie, it appears that the entire statement in totality lacks the ingredients of Section 375 of the IPC but for the word rape mentioned, after consideration of the entire facts, as the incident starts in the year 2006 and until the applicant allegedly denied for the marriage there was no any report lodged by the prosecutrix or the matter was intimated to her family members/other reliable persons of the society, I am inclined to grant one opportunity to the applicant so that he shall not involve himself in any offence and shall live peacefully in society. Consequently, the instant MCRC is hereby allowed. The applicant is directed to be released on bail on his furnishing a personal bond in the sum of Rs.50,000/- with two solvent sureties of Rs.25,000/- each to the satisfaction of the Judicial Magistrate First Class, Katghora, Distt. Korba, C.G./ the trial Judge for his appearance before the said trial Court as and when directed till trial.

6. 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; and (iv) the trial Court finds that the applicant remains 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.

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

8. Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
Judge