

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Criminal Case (A) No.668 of 2017**

- Rahul Gopal S/o Kamal Kishor Gopal, Aged About 27 Years R/o Gram- Block Colony Pathalgaon, Tahsil- Police Station, Pathalgaon, District Jashpur, Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through The In- Charge Officer, Police Station Pathalgaon District- Jashpur, Chhattisgarh.

---- Respondent

For Applicant	: Shri Mateen Siddique, Advocate
For Respondent/State	: Shri Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****24.8.2017**

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 his arrest in connection with Crime No.108/2017 registered at Police Station Pathalgaon Distt. Jashpur (CG) for offence punishable under Sections 493 and 376 of the Indian Penal Code.

3. Learned counsel for the applicant submits that in the entire FIR and the statement of the prosecutrix recorded under Sections 161 & 164 of the Cr.P.C., there is no ingredients as required to constitute the offence of rape defined under Section 375 of the IPC is surfaced. With this, looking to the entire material collected against the applicant, as the prosecutrix was a consenting party, aged about

36 years, the applicant may be granted anticipatory bail in the event of his arrest.

4. Per contra, learned counsel for the State opposed the arguments advanced on behalf of the applicant and would submit that the applicant made physical relation with the prosecutrix under the pretext of marriage, and also executed one agreement on 25.6.2016 to marry her, failing which the prosecutrix may file case before the police/Court, hence, looking to the above facts, instant bail application may be dismissed.

5. Perused the entire material.

6. After perusal of the FIR registered against the applicant, statement of the prosecutrix recorded under Sections 161 & 164 of Cr.P.C., prima facie, it appears that the prosecutrix was a consenting party. With this, requirement of ingredients under Section 375 of the IPC is not made out. Without commenting anything on its merits, I am inclined to grant anticipatory bail 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.50,000/- 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 Submission by the concerned police station 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 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 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.

9. In addition, the applicant is directed not to communicate/contact in any of the manner with the prosecutrix, family members and witness of the charge sheet or attempt to ask for any favour in the trial directly or indirectly. If so, the witnesses and the prosecutrix may report the said act to the trial Judge and if the trial Judge finds that in any way the applicant directly or indirectly gave pressure or any attempt for any 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 shall take the applicant in custody including other measures as provided under the law.

Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE

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