

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 5531 of 2017

- Sanjay Kumar Tandiya S/o Ramchand Tandiya, Aged About 29 Years, R/o Bishunpur, School Para Charcha, Presently Residing At Haldibadi Chirmiri, Police Station Chirmiri, Tahsil Khadgawa, District Korea Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, Police of Police Station Chirmiri, Tahsil Khadgawa, District Korea Chhattisgarh.

---- Non-applicant

For Applicant – Shri Anil Gulati, Advocate.

For Non-applicant/State – Shri Vinod Tekam, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

14-09-2017

1. Heard the matter finally.
2. Learned counsel for the applicant would submit that the applicant held arrested in connection with Crime No.190/2017 on 18-5-2017 by P.S. Chirmiri, District Korea, C.G. for the offence under Section 493, 376(2)(n), 506 Part II of the IPC. After investigation police had filed the charge sheet before the concerned Magistrate, the said criminal Court committed the matter to the Court of Sessions; presently the matter is pending before the Additional Sessions Judge Manendragarh, District Korea, C.G. as Sessions Trial No.86/17. Learned counsel for the applicant would further submit that in the FIR, statement recorded under Section 161, Section 164 of the Cr.P.C. there is nothing to constitute the offence of rape as defined in Section 375 of the IPC. Mere allegation that the applicant made physical relation on the pretext of marriage, offence under Section 376 of the IPC does not attract; though there is an allegation for threat, but as the principal Section is not attracted prima facie, the applicant may be enlarged on bail.
3. Per contra, learned counsel for the non-applicant/State opposed the argument advanced on behalf of the applicant.

4. Perused the entire material.

5. After perusal of the FIR, statement recorded under Section 161, 164 of the Cr.P.C., it appears prima facie for the purposes of consideration of the bail petition that ingredients required to constitute the rape, i.e., against will and consent, is not surfaced in the above documents, on consideration of the entire facts, as the matter may be a case of consent, I am inclined to grant one last 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 Additional Sessions Judge Manendragah, District Korea, C.G. for his appearance before the said 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 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

Aadil