

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 829 of 2017

- Roshan Kiro S/o Shri Sylvanus Kiro, Aged About 32 Years R/o Infront Of Gramin Bank, Main Road Surajpur, Police Station Surajpur, District Surajpur Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through Police Station, Mahila Police Station, Surajpur, District Surajpur Chhattisgarh.

---- Respondent

For Applicant : Ms. Sharmila Singhai, Advocate.
For Respondent/State : Mr. Vinod Tekam, Panel Lawyer.
For Objector : Mr. Jitendra Shrivastava, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

12/12/2017

1. The applicant has preferred this bail application under Section 438 of Cr.P.C. apprehending his arrest in connection with Crime No.259/2017 registered at Police Station-Surajpur (C.G.), for the offence punishable under Section 376 of the Indian Penal Code (for short 'IPC').
2. Learned counsel for the applicant submits that applicant is innocent and has been falsely implicated in this case. The prosecutrix had been a consenting party. She had given conflicting statement about the date of incident. In the complaint submitted in PS-Simdega (Jharkhand), the date of incident was shown as 24.2.2017 whereas in the written complaint given in PS-Surajpur, the date of incident was shown as

26.2.2017. Secondly, the first complaint was given in PS-Simdega on 18.5.2017 i.e. after a delay of more than two months, whereas second complaint was given on 24.2.2017. There is no explanation for this delay by the complainant. The medical report is also negative. Hence, under these circumstances, applicant is entitled for grant of anticipatory bail.

3. Learned State counsel opposes the bail application and the submissions made in this respect. It is submitted that prosecutrix has made a clear and categorical statement against the applicant that on the date of incident he committed forcible sexual intercourse with her against her wishes and consent. Mentioning of wrong date of incident by itself does not affect the prosecution case. He further submits that in the cases of this nature the explanation for delay cannot be asked for. Hence, prayed that application for grant of anticipatory bail be rejected.
4. Learned counsel for objector submits that there is a clear statement of prosecutrix, that the act of applicant had been forceful and without her consent. Further, when prosecutrix had expressed her intention to lodge FIR, the applicant stopped her by saying that he will marry her but he did not marry her. Hence, under these circumstances, it is a clear cut case of rape for which applicant is not entitled for grant of anticipatory bail.
5. Heard both the counsel and perused the case diary.
6. The case against the applicant is that on the date of incident either on 24.2.2107 or 26.2.2017, prosecutrix came to the place of applicant in Surajpur on his invitation and she also went to the house of the applicant. During her stay in the house of the applicant, applicant closed the door and then committed forcible sexual intercourse with

her. The first written complaint was given on 18.5.2017 in PS-Simrega (Jharkhand). The complaint was returned to the complainant with the endorsement that the place of incident is Surajpur in the State of Chhattisgarh, hence, the prosecutrix was directed to lodge FIR in Surajpur (C.G.) and thereafter it took more than a month when prosecutrix gave a written complaint in PS-Surajpur on 24.6.2017.

7. Considering the submissions and the contents of the case diary and looking to the development of things and the time elapsed between the commission of offence and lodging of FIR, I am of this opinion that applicant deserves to be enlarged on anticipatory bail. The trial Court shall not be influenced by any of the observations made in this order while deciding the case against the applicant.
8. 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 his executing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Investigating Officer. The applicant 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 him/her 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 them by the said Court till disposal of the trial.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha