

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 1238 of 2016

- Ganesh Kashyap S/o Late Shri Ramkripal Kashyap Aged About 33 Years Occupation- Welding Shopkeeper, R/o Village Belgahna, Police Chowki- Belgahna, Police Station & Tahsil-Kota, District Bilaspur, Chhattisgarh.

---- Petitioner

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Station Kota, District Bilaspur Chhattisgarh.

---- Respondent

For Applicant : Mr. Goutam Khetrapal, Advocate

For Respondent/State : Mr. U.K.S. Chandel, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

8-3-2017

1. Apprehending arrest in connection with Crime No. 46 of 2016 registered at Police Station Kota District Bilaspur (CG), for offence punishable under Section 376 IPC and Section 3(2-5) and 3(1-11) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "the Act, 1989"), the applicant has preferred the bail application under Section 438 of the Cr.P.C., for grant of anticipatory bail.
2. As per case of the prosecution, on 21-3-2016 a report was made by the prosecutrix that she was a married lady and developed relation with one Rahul Kashyap, brother of the present applicant. Thereafter, on the pretext of marriage, Rahul Kashyap had developed physical relation with the victim girl having known the fact that her husband had left the victim at her matrimonial home and thereafter she wanted to enter into the house of the present

applicant wherein his brother was residing and during such process, she was objected, abused in the name of her caste and was forcefully thrown from the house of the applicant situated at village Amartal.

3. Learned counsel appearing for the applicant would submit that the applicant has been falsely implicated in this case, prosecutrix was a married lady and without taking divorce from her husband she wanted to enter into the house of the present applicant and the applicant wanted to defend the same, therefore, false allegations have been attributed to the present applicant. He would further submit that there is no intention of the applicant to abuse or intimidate the prosecutrix in public, therefore, no offence is made out. Therefore, considering all the facts and circumstances of the case, the applicant may be extended the benefit of Section 438 of the Cr.P.C.
4. Learned State counsel opposes the prayer for grant of anticipatory bail.
5. I have heard learned counsel for the parties, perused the case diary and documents.
6. Perused the statements of the prosecutrix recorded under Sections 161 and 164 of Cr.P.C.. In the statement recorded under Section 164 of the Cr.P.C., no specific caste based abuses have been made. From perusal of the documents, it appears that the prosecutrix wanted to enter into the house of the applicant and the incident happened in the house of the applicant.
7. Taking into consideration all the facts and circumstances of the case and the back-ground of the case, the requisite *mens rea*

appears to be absent. Thus, the bar under Section 18 of the Act, 1989, does not come in the way. Therefore, I am inclined to extend benefit of anticipatory bail to 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 local 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) the applicant shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

Certified copy as per rules.

Sd/-
(Goutam Bhaduri)
Judge

Raju