

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MCRCA No. 357 of 2017**

- Jairam Mandavi S/o Late Shri Dhansay Mandavi, Aged About 50 Years Inspector Police, Police Control Room, R/o Police Lines, Surajpur, District Surajpur, Chhattisgarh.

**---- Applicant**

**Versus**

- State Of Chhattisgarh Through the District Magistrate Surapur, Chhattisgarh.

**---- Non-applicant**

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For Applicant – Shri P.K.C.Tiwari, Senior Advocate with Shri Shashi Bhushan Tiwari, Advocate.

For Non-applicant/State – Shri Neeraj Jain, Govt. Advocate.

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**Hon'ble Shri Justice Chandra Bhushan Bajpai**

**Order on Board**

**06-07-2017**

1. Learned counsel for the State/non-applicant submitted date-wise written synopsis. The said is made part of the matter.
2. Heard the matter finally.
3. Learned counsel for the applicant would submit that the applicant is apprehending his arrest in connection with Crime No.179/2015 registered at Ramanujnagar Police Station, District Surajpur, C.G. for the offence punishable under Section 376(2)(f) of the IPC. Learned counsel for the applicant would further submit that the prosecutrix (name not mentioned) had submitted a written complaint against superior official, i.e., the applicant dated 21-07-2014 for the alleged incident committed between 15-06-2014 till 25-06-2014 when allegedly the applicant neglected the prosecutrix. As directed the Additional Superintendent of Police Surajpur conducted an enquiry and sent his report to the Superintendent of Police Surajpur, C.G. dated 26-07-2014. In the said enquiry the Additional Superintendent of Police recorded the statement of both the parties and held that the allegation against the applicant is not correct and merely the ground proved that the applicant forcefully sent the prosecutrix to his residence for preparing meal for him. After the departmental enquiry and

examination of the concerned witnesses the applicant was sentenced for fine. The applicant had clear record. Looking to the nature of evidence and the facts surfaced, offence under Section 376(2)(f) is not made out. Both the applicant and the prosecutrix are married already to their spouse. The prosecutrix was left by her husband. The applicant will cooperate in further investigation. He is a responsible police officer; whatever terms and conditions may be imposed the applicant will abide by the said terms and conditions. Looking to the entire facts, as prima facie allegation under Section 376(2)(f) of the IPC is not made out, the applicant may be granted protection by allowing the anticipatory bail petition.

4. Per contra, learned counsel for the State/non-applicant opposed the argument advanced on behalf of the applicant and would submit that after said administrative preliminary enquiry report the coordinate Bench of this Court in Cr.M.P. No.441/2015 directed the police to register the FIR and investigate the matter, as per para 14 of the order dated 24-07-2015 which is for relevance reproduced here:-

"14. Therefore, by application of the aforesaid principles, the reading of the complaint, it reveals that complaint certainly disclosed a cognizable offence. Therefore, the Police is required to register the FIR and investigate the matter. The credibility of the information whether it is correct or false cannot be done by way of Departmental enquiry and an order of acquittal can be passed by usurping the jurisdiction of Court . In view of the discussions held in the preceding paras, it is directed that respondents No. 1 & 2 shall register the FIR on the complaint made by the petitioner by complaint dated 21/07/2014 and thereafter shall give the crime number and proceed to deal with the same in accordance with procedure laid down in the code."

With this, the police had taken cognizance, registered the matter against the applicant and is investigating the same under the authority of law. The instant MCRCA may be dismissed.

5. Perused the entire material.

6. It is surfaced that after the said preliminary enquiry report, the coordinate Bench of this Court directed the police to take cognizance and register the matter under the provision of law and to investigate the matter. With this, prima face, for the purpose of appreciation of the present matter, the alleged preliminary enquiry report is of no prominence over the other facts. Perused the written report and other facts.

7. On due consideration, looking to the allegations and other facts, I am not inclined to grant anticipatory bail to the applicant. Consequently, the instant MCRCA is hereby dismissed. Police is directed to investigate the matter as expeditiously as possible under the provisions of law.

8. At this stage, on behalf of the the applicant it is submitted that the applicant intends to surrender before the Court having jurisdiction and also intends to file appropriate application under the law for his release on bail. If the applicant surrenders before the Court having jurisdiction, after completion of entire formalities as required under the law by the Court concerned and the concerned police, thereafter if the applicant files any application for his release on bail under the provision of law, the said may be disposed of as expeditiously as possible preferably the same day.

9. Certified copy as per rules.

**Sd/-**  
**(Chandra Bhushan Bajpai)**  
**JUDGE**