

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Criminal Case No.3696 of 2017**

- Dolamani Pradhan S/o Shri Siyaram Pradhan Aged About 22 Years Caste - Kolta, R/o Village - Jognipali, Tahsil And Police Station - Saraipali, Civil & Revenue District, Mahasamund, Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through : Police Station - Saraipali, Tahsil & Civil & Revenue District & District - Mahasmund Chhattisgarh.

---- Respondent

For Applicant : Shri JA Lohani, Advocate
 For Respondent/State : Shri UKS Chandel, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****13.7.2017**

Heard the matter finally.

2. This is an application filed under Section 439 of the Cr.P.C. for grant of regular bail to the applicant, who has been arrested in connection with Crime No.63/2017 registered in Police Station Saraipali, Distt. Mahasamund (CG) for the offence punishable under Sections 493 & 376 of the Indian Penal Code.

3. Learned counsel for the applicant submits that the applicant has been arrested on 27.02.2017, after investigation, concerned police has filed charge sheet, which is pending as Session Trial No.18/17 before Additional Sessions Judge, Saraipali, Mahasamund. Learned counsel for the applicant submits that first document regarding the commission of any offence is the written

report dated 04.02.2017 by the prosecutrix. Undisputedly, the prosecutrix is a major and in the First Information Report, she has not said anything on the basis of which the element of Section 375 of the IPC is constituted. With this there is nothing to demonstrate that sexual intercourse was committed against the will and consent as required. Even the said agreement as surfaced in the said report is not considered during investigation and also after considering the statement of the prosecutrix recorded under Sections 164 and 161 of Cr.P.C., the element of rape against the will and consent is lacking. In addition to it the prosecutrix has been examined in the trial, but has not supported the case of the prosecution. Other witnesses also turned hostile, IO has been examined, he admitted that he has not seized the said stamp and if the stamp would have been seized, the condition would have been clear and as per the documents seized, the prosecutrix and the applicant stayed in a lodge as husband and wife and also admitted that there is no signature of the prosecutrix in the FIR as per para 11 of the statement of IO i.e. PW-11. Learned counsel for the applicant would submit that prima facie for the purpose of instant bail application there is no element of rape as defined, hence the applicant may be granted bail.

4. Per contra, learned counsel for the State opposes the arguments advanced on behalf the applicant and would submit that in the pretext of marriage, the applicant made physical relationship with the prosecutrix which constitute the offence, hence, his application for bail may be dismissed.

5. Perused the entire material.

6. The applicant is in custody since four months and sixteen days, earlier the applicant has preferred M.Cr.C. No.2057/2017 and the same was disposed of as withdrawn vide order dated 11.4.2017 with liberty if available under the law after the examination of the prosecutrix in the trial. On perusal of the written report of the prosecutrix, First Information Report, statement of the prosecutrix recorded under Sections 164 & 161 of Cr.P.C., statement of the witnesses including IO and prosecutrix, without commenting anything on its merits, I am inclined to grant one opportunity to the applicant, so that he shall not commit any similar or other offence in future.

7. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed.

8. It is directed that the applicant shall be released on bail on furnishing a personal bond in the sum of Rs.50,000/- with one solvent surety of like sum to the satisfaction of Additional Sessions Judge, Saraipali, Mahasamund for his appearance before the said Court as and when directed.

9. 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 the above, the Court below may proceed further under the provisions of law, under intimation.

Certified copy as per rules.

Sd/-

(Chandra Bhushan Bajpai)

JUDGE