

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.Cr.C.(A) No. 588 /2017

Hemant Kumar Deshmukh, S/o. Late Shri Daman Singh, Aged About 33 Years, R/o. Beside Jyoti Opticals, In Front Of Purohit Lodge, Kutcheri Road, Aapapura Durg, Civil & Revenue District- Durg, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh, Through: Station House Officer, Mahila Thana, Durg, Chhattisgarh.

---- Respondent

For Applicant	:	Mr. Bhaskar Payashi, Advocate.
For Respondent	:	Mr. Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

26.07.2017

1. Apprehending arrest in connection with Crime No.20/2016 registered at Police Station- Mahila Thana, Durg (C.G.) for the offence punishable under Section 498A, 354, 377 read with 34 & 406 of Indian Penal Code & Section 4 of Dowry Prohibition Act, the applicant has preferred this second bail application under Section 438 of the Code of Criminal Procedure for grant of bail.
2. The facts would reveal that initially the applicant Hemant Kumar Deshmukh filed a bail application MCRCA No.1256 of 2016 alongwith his brother wherein the case was registered under Section 498A, 354 read with Section 34 of Indian Penal Code and Section 4 of Dowry Prohibition Act, which was allowed and the applicants therein were granted anticipatory bail. After grant of bail on 09.03.2017, another statement was recorded that of the complainant wherein the allegation of unnatural sex was alleged; thereby, Section 377 of I.P.C has been added.

3. As per the prosecution case, a report was made by smt. Archana Gautam on 13.10.2016 that she was married to the applicant Hemant Kumar Deshmukh on 29.11.2012 and thereafter she was subjected to torture for various reasons and was abused for demand of dowry.
4. Learned counsel for the applicant would submit that after the grant of bail on 09.03.2017 to inculcate the applicant deliberately further an inflated statement to attract Section 377 of I.P.C. has been made and alongwith it Section 406 was added. He made a submission and referred to the case ***Siddharam Satlingappa Mhetre v. State of Maharashtra & Ors.***¹ and would submit that as per the principles laid down in such case, once the anticipatory bail is granted then the protection should ordinarily be available till the end of the trial and here in this case, deliberately addition of section was made, therefore, the applicant may be enlarged on bail for the newly added Section in Crime No.20/2016. He further stated that as per ***Sayera Bi v. State of M.P.***² the principles have been held that the accused once have been released on bail in a particular crime and in case of addition of major offence in the charge sheet, he is not required to be taken into custody unless there is some compelling circumstances would show and here in this case no compelling circumstances has been shown by the prosecution, therefore, the applicant may be enlarged on anticipatory bail.
5. Per contra, learned State counsel opposes the prayer for grant of anticipatory bail and would submit that after the bail was granted, the statement of the victim was recorded under Section 164 of Cr.P.C. wherein such allegations have been made, therefore, the benefit of anticipatory bail may not be given to the applicant.

1 (2011) 1 SCC 694

2 2006 Cr.L.R.(M.P.262)

6. Perused the case diary and the documents. It appears that after the anticipatory bail was granted on 09.03.2017, the statement of the victim/ complainant Archana was recorded on 25.03.2017 wherein it shows that the allegation of Section 377 has been added. The earlier statement recorded on 16.10.2016 was also perused wherein the similar statements have been made.
7. The Supreme Court in case of **Siddharam Satlingappa Mhetre**¹ has expressed the view that once the anticipatory bail is granted then the protection should ordinarily be available till the end of the trial unless the interim protection by way of the grant of anticipatory bail is curtailed when the anticipatory bail granted by the court is cancelled by the court on finding fresh material or circumstances or on the ground of abuse of the indulgence by the accused. Further, the view expressed in case of **Sayera Bi**² holds that accused released on bail in a particular crime and in case of addition of major offence in the charge sheet, he is not required to be taken into custody unless there is some compelling circumstances.
8. Perusal of the case diary do not show that the applicant has abused or misused the liberty or any new facts have been projected. Considering the same, I find it to be a fit case where the benefit of Section 438 of Cr.P.C. can be extended to the applicant for the offence under Section 498A, 354, 377 read with Section 34 & 406 of Indian Penal Code & Section 4 of Dowry Prohibition Act.
9. 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 furnishing a personal bond to a 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 him by the said Court till disposal of the trial.

Certified copy, as per rules.

Sd/-
(Goutam Bhaduri)
Judge