

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Criminal Case No.2408 of 2017**

- Guljar Singh S/o Balveer Singh, Aged About 27 Years R/o Gadhfaljar, Police Station- Basna And Tahsil Basna, District- Mahasamund, Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Though Police Station, Basna, District- Mahasamund, Chhattisgarh

---- Respondent

For Applicant	: Shri Kishore Bhaduri and Shri Ravi Bhagat, Advocates
For Respondent/State	: Shri Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****01.8.2017**

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.02/2017 registered in Police Station Basna, Distt. Mahasamund (CG) for the offence punishable under Section 376 of the Indian Penal Code.

3. Learned counsel for the applicant submits that the applicant has been arrested on 13.01.2017, after investigation police has filed charge sheet which is pending before Judicial Magistrate First Class, Basna Distt. Mahasamund as Criminal Case No.112/2017. Learned counsel for the applicant is not aware whether for the moment the matter is committed or not. He further

submits that there is no allegation of sexual intercourse against the will and consent of the prosecutrix as defined in Section 375 of IPC. Hence, offence under Section 376 IPC prima facie is not made out. The prosecutrix is a major girl, FIR was lodged after three years of the incident alleged to have been committed and also there is no medical corroboration. Hence, the instant bail application may be allowed.

4. Per contra, learned counsel for the State opposes the arguments advanced on behalf of the applicant and would submit that on the false promise of marriage, the applicant made physical relation with the prosecutrix for three years and also looking to the entire facts, the application for bail may be dismissed.

5. Perused the entire material.

6. A perusal of the FIR, which was lodged on the basis of the written complaint dated 13.12.2016 made by the prosecutrix, and the statement of the prosecutrix recorded under Section 161 Cr.P.C. during investigation, prima facie, ingredients required for Section 375 IPC i.e. 1 & 2 'against will and without consent' are lacking in the present matter. On due consideration of the entire evidence, without commenting anything on its merits, I am inclined to grant one opportunity to the applicant so that he will not commit any offence in future and shall remain peacefully in the society.

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 amount to the satisfaction of the Judicial Magistrate First Class, Basna, Distt. 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