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HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.(A) No. 43 of 2018**

Gopal Prasad Chowkse S/o Late Jagdish Prasad Chowkse, Aged About 24 Years Government Servant Caste Kalar, R/o Sithara, P. S. Dharamjaigarh District Raigarh Chhattisgarh.

---- Applicant**Versus**

State Of Chhattisgarh Through SHO P.S. Chaal District Raigarh Chhattisgarh.

---- Respondent

For the Applicant : Shri H.S. Ahluwalia, Advocate.
For the Respondent/ State : Shri Vijay Bahadur Singh, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****03.05.2018**

1. Heard on application under Section 438 of the Code of Criminal Procedure, 1973.
2. This is the first bail application filed under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail to the applicant who is apprehending arrest in connection with Crime No. 144 of 2017 registered at police station Chaal, District Raigarh, Chhattisgarh for the offence punishable under Section 376 of the Indian Penal Code.
3. It is submitted by counsel for the applicant that the applicant has been falsely implicated in this case. The age of the prosecutrix on the date of incident was 32 years old and she had consensual physical relationship with the applicant. The only grievance of the prosecutrix is that this applicant has

refused to marry her because of which, the FIR has been lodged. Hence, it is prayed that the applicant be benefited with grant of anticipatory bail.

4. Learned State counsel opposes the bail application and the submissions made in this respect. It is submitted that in the statement under Section 164 of the Cr.P.C., the prosecutrix has made clear allegation that this applicant has forcefully raped her. Hence, the applicant is not entitled for grant of anticipatory bail.

5. Heard counsel for both the parties and perused the case diary.

6. A written complaint was given by the prosecutrix in P.S. Chahal alleging that she was posted as Auxiliary Nurse Midwifery (ANM) in Primary Health Centre, Purunga and the applicant was also posted as a Clerk in High School, Purunga. This applicant gave allurements to the prosecutrix that he will marry her and thereafter, the applicant had physical relation with her on number of occasions. About one month prior to lodging of FIR on 1.12.2017, the applicant refused to marry the prosecutrix and stopped meeting her, because of which, the FIR was lodged against the applicant, and the case has been registered.

7. A development is seen in the statement under Section 164 of Cr.P.C. in which the prosecutrix was alleged that the rape was committed forcefully by the applicant against her. Although, the prosecutrix is a member of Scheduled Tribe, but as it appears that the relationship was established on the basis of her willingness with the applicant in which her caste was not a hindrance. Hence, I am of this view that the bar under Section 18 of the

Atrocities Act is not applicable in this case. After due consideration, I feel inclined to grant 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 executing a personal bond in 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 them 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.'

Sd/-

(Rajendra Chandra Singh Samant)
Judge