

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MCRCA No. 108 of 2018

Devi Dayal Patel S/o Shri Lalan Singh Patel, aged about 24 years,
R/o village Ghondgha, P.O. Revti, P.S. Chandora, Tahsil Pratappur,
District Surajpur (C.G.).

---- Applicant

Versus

State Of Chhattisgarh Through Police Station Gandhinagar, District
Surguja (C.G.).

---- Respondent

For Applicant	:	Shri A.K.Prasad, Advocate.
For Respondent	:	Shri Sangharsh Pandey, Dy.G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

09/04/2018

1. Present is an application filed under Section 438 of Cr.P.C. seeking for anticipatory bail to the applicant apprehending his arrest in connection with Crime No. 06/2017 registered at Police Station Gandhinagar, District Surguja (C.G.) for the offence punishable under Sections 306, 376(2)(n), 417 of IPC and Sections 3(2)(5) & 3(2)(V-a) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.
2. The allegation against the present applicant as per the prosecution case is that, the present applicant is said to have on the pretext of marriage had a physical relationship with the deceased – Mini Toppo and finally ditched the prosecutrix and refused to marry her as a result of which she consumed certain medicinal drugs on 10/03/2016 on account of which she later on succumbed on 12/03/2016.
3. Initially, after the merged investigation an offence under Section 306 of IPC was levelled against the present applicant and an F.I.R. was lodged on 09/01/2017, only for the offence under Section 306 of IPC. The present applicant had obtained bail from the trial Court on 30/03/2017.
4. Later on the police authorities had recorded the statements of few witnesses i.e. the sister in law of the deceased, the mother of the

deceased and few more statements in the month of December-2017 and pursuant to the statement of these witnesses, the offence under Sections 376(2)(n) & 417 of IPC and the offence under Sections 3(2)(5) & 3(2)(V-a) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 was also charged.

5. The counsel for the applicant submits that, so far as the offence under Section 306 of IPC is concerned, he had already been granted bail by the trial Court. Section 417 of IPC levelled against the present applicant is a bailable offence. That so far as the offence under Section 376(2)(n) of IPC and Sections 3(2)(5) & 3(2)(V-a) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 is concerned, the same has been charged only on the basis of the statements of the relatives of the deceased which was recorded after one year and 9 months from the date the deceased had died and after about 1 year from the date the F.I.R. was lodged. Thus, it appears that the statements so made by these persons become doubtful in itself. He further submits that, the deceased was alive between 10/03/2016 to 12/03/2016 and during this period, the police authorities nor the hospital authorities had recorded any statement with which the allegation of rape or the offence under the SC/ST Act could have been attracted against the present applicant and thus prayed for granting the benefit of Anticipatory Bail to the applicant.
6. The State counsel on the contrary opposing the appeal submits that it is a case where the present applicant on the pretext of marriage is said to have had a physical relationship with the prosecutrix for a considerable period of time. In between, he is also said to have obtained huge amount of monetary aid and the present applicant later on has refused to marry the prosecutrix and is said to have married some other person which led her to commit suicide and thus prayed for rejection of bail application.
7. Considering the entire facts and circumstances of the case, particularly taking note of the fact that, the family members of the deceased have not made any complaint against the present applicant from the date of incident till their statement for the first time was recorded with the police authorities in December-2017, the offence under Section 376(2)(n) of IPC and offence under SC/ST Act

which was levelled against the present applicant was not sustainable. Moreover except for the oral statements made by the witnesses, there is no evidence whatsoever collected or which have been gathered with which the allegation of 376(2)(n) of IPC or for that matter the offence under SC/ST Act could prima-facie be established from the contents of the case diary.

8. Given the aforesaid facts and circumstances of the case, this Court is of the opinion that prima-facie a strong case for grant of Anticipatory Bail has been made out.
9. Accordingly, the application under Section 438 of Cr.P.C. is allowed. It is directed that in the event of arrest of the present Applicant in connection with the aforesaid offence, he shall be released on bail on furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like amount to the satisfaction of the concerned arresting/investigating officer or the Court concerned, as the case may be, with the following terms and conditions:
 - (i) that the applicant shall make himself available for interrogation before the concerned 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.

Sd/-
(P. Sam Koshy)
Judge