

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 217 of 2018

- Balgovind son of Mahajan Minj, aged about 28 years, Caste- Uraon, resident of Jagarnathpur, Tahsil- Pratappur, District- Surajpur (Chhattisgarh).

---- Applicant

Versus

- State of Chhattisgarh, Through: the Station House Officer, Police Station-Outpost Khadgawankala, Police Station- Pratappur, District- Surajpur (Chhattisgarh).

---- Non-applicant

For Applicant	:	Mr. Rahul Mishra, Advocate.
For the State	:	Mr. Anant Bajpai, P. L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

03/05/2018

1. Heard.
2. Applicant has filed this bail application under Section 438 of the Cr.P.C. apprehending his arrest in connection with Crime No. 94/2017 Registered at Police Station- Outpost- Khadgawankala, Police Station- Pratappur, District- Surajpur, (C.G.), for the offence punishable under Sections 376, 342, 294, 506, 323, 368, 34 of IPC.
3. Learned counsel for applicant submits that applicant has been falsely implicated in this case. In this case, prosecutrix was a major girl on the date of incident and the physical relation that has happened with the applicant was with her consent. The grievance of the prosecutrix arose only when this applicant had refused to marry with her, hence, it is prayed that applicant be extended the benefit of Section 438 of the

Code of Criminal Procedure.

4. On the other hand, learned State counsel opposes the bail application and submits that prosecutrix has made clear statement that this applicant had forcefully raped her, hence it is not a case for grant of bail to the applicant. He further submits that applicant has never cooperated with the trial and remain absconding through out in the Court proceeding and looking to the statement of the prosecutrix made against the applicant under Section 161 Cr.P.C., the applicant is not entitled for anticipatory bail.
5. In reply to this, counsel for the applicant submits that applicant is an army person and he has never absconded but was posted in the border of India & China because of which he was unable to appear for the investigation and any other proceeding.
6. Heard both the parties and perused the case diary.
7. According to the case of the prosecution, the prosecutrix made a complaint alleging that on 05.05.2015 applicant had committed forcefully sexual intercourse with her; and the applicant assured her that he will marry her and told her not to tell anything to anybody. Therefore, prosecutrix could not tell about the incident to any person and thereafter whenever applicant used to come on leave, both of them used to have physical relation. In between the prosecutrix became pregnant but that pregnancy was aborted at the instance of this applicant. Later on applicant bluntly refused to marry with the prosecutrix and because of which the complaint was made on 17.03.2017. Hence this Case.
8. Considering the material present in the case diary. The allegation of rape is only with regard to the first incident that took place on 05.05.2015 and thereafter according to the Statement of prosecutrix itself she was the consenting party to the act of the applicant. The age

of the prosecutrix was above 18 years at the time of incident and according to the material present in the case diary, it is also evident that on number of occasions prosecutrix went to reside with the family of the applicant but the family members refused to have her as a member of their family and drove her out, because of which they have been made co-accused in this case. After overall consideration on fact and circumstances of this case, hence, I am of this view that applicant should be extended the benefit of Section 438 of the Cr.P.C.

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, she 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 trial Court. The applicant shall also abide by the following conditions :

- (i) that the applicant shall make herself 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.

Sd/-

(Rajendra Chandra Singh Samant)
Judge