

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 994 of 2017

B. Narsimha Raju S/o Shri B. Krishan Rao, Aged About 37 Years R/o B. M. Y. Charoda, Patan, District Durg Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through The Station House Officer, Police Station G R P, Bhilai, Charoda, Tahsil Patan, District Durg Chhattisgarh.

---- Respondent

For Applicant	:	Ms. Sunita Jain, Advocate
For State	:	Shri Avinash Singh, Panel Lawyer

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

03/01/2018

Heard.

1. This application under Section 438 of Cr.P.C. has been preferred by the applicant apprehending his arrest in connection with Crime No.40/2017, registered in Police Station -GRP, Bhilai, Charoda, Tahsil-Patan, District- Durg, for alleged commission of offence under Section 376 IPC.
2. Case of the prosecution, in brief, is that the applicant committed rape on the prosecutrix in the background that the applicant and the prosecutrix had developed an affair which resulted in Court marriage but later on separated by decree of divorce by mutual consent and again sexual intercourse committed on the false pretext of marriage according to customs.
3. Learned counsel for the applicant would argue that present case is a classic

example of falsity of allegation of commission of offence of rape. It is argued that even according to prosecutrix, the applicant and the prosecutrix had an affair. They got married, though, later on, because of the unacceptability by their family, a decree of divorce was granted on the basis of mutual consent. The prosecutrix admits that even thereafter, she continued to have physical relation with the applicant because the applicant used to assure her that they will again re-marry according to ritual and customs applicable to their society but when she came to know that applicant is not serious and is going to contract marriage with some other girl, FIR was lodged. Therefore, it is argued, even if the entire allegation are accepted as it is, no case is made out for commission of offence under Section 376 IPC.

4. On the other hand, learned counsel for the State, opposing the bail application, submit that the applicant indulged in sexual intercourse with the prosecutrix on the false pretext of marriage, therefore, a prima facie case of rape is made out as defined under Section 375 IPC.
5. Taking into consideration the submissions made by learned counsel for the parties, the relationship between the applicant and the prosecutrix of they having married and then taken divorce on mutual consent and then again maintaining physical relation since long, it is a fit case where the applicant needs to be protected by granting him anticipatory bail.
6. The application is accordingly allowed. 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 arresting officer on his furnishing a personal bond in the sum of Rs.20,000/- along with one local surety for the like amount to the satisfaction of the arresting officer with following further conditions that:
 - (i) the applicant shall make himself available for interrogation by the police officer as and when required;
 - (ii) 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 from disclosing such facts to the Court or to any police officer;

Certified copy as per rules.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen