

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 242 of 2018**

1. Sumit Shukla S/o Shantikumar Shukla, aged about 28 years, R/o Sanjaynagar, Bodhghat Colony, Jagdalpur, District Bastar, CG

---- Applicant**Versus**

1. State of Chhattisgarh through Station House Officer, Police Station City Kotwali, Jagdalpur, District Bastar, CG

---- Respondent

For Applicant	-	Shri Awadh Tripathi, Advocate
For State	-	Shri Shashank Thakur, GA

Order on Board by Hon'ble Shri Justice Pritinker Diwaker**21/05/2018**

This application under Section 438 of the Code of Criminal Procedure has been filed by the applicant who is apprehending his arrest in connection with Crime No. 40/2018 registered at Police Station, City Kotwali, Jagdalpur, District Bastar for commission of the offence punishable under Section 376 IPC.

2. Case of the prosecution in brief is that on 31.1.2018 a written report was lodged by the prosecutrix aged about 27 years – an engineering graduate, to the effect that in October, 2016 there was a negotiation between her family and that of the accused/applicant for her marriage with him and for that both the families had agreed too. It is alleged that on 26.6.2017 the applicant came to the house of the prosecutrix and had physical relations with her, which continued for quite some time. However, after the applicant refused to marry the prosecutrix on account of the fact that her horoscope did not tally with that of his, the report was lodged. Based on this report, FIR was registered against the accused/applicant.

3. Counsel for the applicant submits that the report has been lodged by the prosecutrix when marriage of the applicant was to be solemnized with one Rashmi Tiwari on 14.2.2018. He submits that family of the applicant is an orthodox family and normally in his family marriage is not solemnized unless there is proper match of horoscope. He submits that the physical relations with the applicant and the prosecutrix, if any, was consensual and further that considering the age of the prosecutrix, even if entire prosecution story is taken to be true, offence under Section 376 IPC is not made out against the accused/applicant. He placed reliance on the decision of this Court in the matter of **Mahendra Kumar Sahu v. State of Chhattisgarh** reported in **2011 (4) CGLJ 582** and on yet another order dated 4.5.2018 passed in **MCRCA 330/2018 (Sumit Kumar Jayaswal v. State of Chhattisgarh)**.

4. Counsel for the State however opposes the application for anticipatory bail.

5. After hearing counsel for the parties and considering the facts and circumstances of the case, in particular the fact that the physical relations between the two were consensual which continued for quite sometime, and without further commenting on merits of the case, this Court is of the considered opinion that it is a fit case to grant anticipatory bail to the applicant. Accordingly, the application is allowed. It is directed that in the event of arrest of the applicant in connection with aforesaid crime number, he shall be released on bail on his furnishing a personal bond in the sum of Rs. 50,000/- with one surety for the like sum 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 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/-

(Pritinker Diwaker)
Vacation Judge

Jyotishi