

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC(A) No. 506 of 2018**

- Om Prakash Chandra S/o Ayodhya Prasad Chandra Aged About 28 Years R/o Village Jaijaipur, P. S. And Tahsil Jaijaipur, District Janjgir Champa Chhattisgarh At Present R/o Bram Anugul Tahsil And District Angul Odisha, District : Anugul , Orissa

---- Applicant

Versus

- State Of Chhattisgarh Through The District Magistrate, Korba Tahsil And District Korba Chhattisgarh, District : Korba, Chhattisgarh

---- Respondent

For the applicant : Ms.Hamida Siddique, Advocate.
For the respondent/State : Mr. Sanjeev Pandey, G.A.

Hon'ble Shri Justice Ram Prasanna Sharma
Order on Board

28-6-2018.

1. The applicant has preferred this bail application under Section 438 of the Cr.P.C. for grant of anticipatory bail as he apprehends his arrest in connection with Crime No. 113/2018, registered at Police Station Balco, District Korba (CG) for the offence punishable under Section 376 of the I.P.C.
2. As per prosecution case on the pretext of marriage, the applicant committed sexual intercourse with the prosecutrix and later on denied to marry her.
3. Learned counsel appearing for the applicant submits that it was in the knowledge of the prosecutrix that marriage cannot be solemnized as family members of the applicant are not ready, therefore, there was no promise to marry by the applicant. She submits that the applicant and the prosecutrix were regularly chatting on whatsapp, therefore, the applicant may be extended the benefit of anticipatory bail. She placed

reliance on the order passed by the co-ordinate Bench of this Court in MCRC(A) No.723/2014 (Purushottam Kumar Kurre Vs. State of Chhattisgarh).

4. On the other hand, learned State counsel opposes the bail application. He submits that consent for physical relations was obtained under misconception of fact and the same is not a consent under Section 90 of the I.P.C., therefore, prima facie offence of rape is made out against the applicant.
5. I have heard learned counsel for the parties and perused the case diary with utmost circumspection.
6. Considering the facts and circumstances of the case and gravity of offence, without further commenting on merits, I am of the opinion that present is not a fit case to extend the benefit of Section 438 Cr.P.C. to the applicant.
7. Accordingly, the bail application filed under Section 438 of the Cr.P.C. is rejected.

Sd/
(Ram Prasanna Sharma)
JUDGE