

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 542 of 2017

Dameshwar Kumar Bande S/o Atamaram Bande, Aged About 24 Years R/o Umariya, Thana Mandir Hasaud, District Raipur, Chhattisgarh., Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through Station House Officer, Police Station Mandir Hasaud, District Raipur, Chhattisgarh., Chhattisgarh

---- Respondent

For Applicant	:	Dr. N.K. Shukla, Senior Advocate with Shri Vikram Sharma, Advocate
For State	:	Shri Manish Nigam, Panel Lawyer
For Complainant	:	Shri B.M. Roy, Advocate

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

Order On Board

02/02/2018

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.143/2017, registered in Police Station -Mandir Hasaud, District- Raipur, for alleged commission of offence under Sections 366, 376, 506 & 450 IPC.
2. Case of the prosecution, in brief, is that the applicant committed rape on the prosecutrix.
3. Learned counsel for the applicant would submit that the present is a case of complete false implication only because some dispute has arisen between the applicant and the wife. Learned counsel would submit that the applicant and

the prosecutrix had a longstanding affair and they married in Arya Samaj Mandir on 27.5.2017. Thereafter, when a dispute arose, a false report was lodged against the applicant. Learned counsel would further submit that even before the Court below, the complainant/objector had filed an affidavit clearly stating that they are married and only because of a dispute between the parties, a report has been lodged otherwise they are husband and wife. Learned counsel for the applicant would submit that in view of this statement of the prosecutrix, it is presently a case of false implication and the applicant may be protected against arrest.

4. On the other hand, learned counsel for the State, opposing the bail application, submits that the prosecutrix in her statement under Section 164 Cr.P.C. has stated that prior to 27.5.2017, on various dates, the applicant used to come and upon threat, commit rape on her and because of the threat, she could not disclose this fact to anybody until it was disclosed to her family members. Learned counsel for the State further submits that the prosecutrix has stated the story that the applicant and prosecutrix's marriage is alleged to have performed under threat and pressure exerted on the prosecutrix. As far as affidavit filed in the Court below is concerned, learned counsel for the State would submit that now the prosecutrix has filed a different affidavit before this Court opposing bail application in which she stated that because of threat and pressure exerted by the applicant, she had to file an affidavit before the Court below. Therefore, in these circumstances, the applicant may not be granted bail.
5. Learned counsel for the Objector/complainant would submit that the complainant has been harassed and subjected to rape by the applicant in the past and all the incidents of sexual intercourse committed earlier on 1.3.2017 and 7.3.2017 were without the consent of the prosecutrix and it was only because the applicant pressurized and threatened her. He would submit that the marriage was solemnized on 27.5.2017 under the pressure of the applicant. He would lastly submit that affidavit was given before the Court below in support of the applicant only under the pressure of the applicant.

6. Having considered the submissions made by learned counsel for the respective parties, taking into consideration that the prosecutrix has admitted solemnization of marriage on 27.5.2017 and that she had filed an affidavit before the Court below stating that she is married with the applicant and because of certain dispute, report was lodged and further taking into consideration that there is no report on record to show that the applicant is such a person of criminal antecedents, I am inclined to protect the applicant.
7. 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.50,000/- 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