

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 567 of 2017**

- Anil Kumar Markanday S/o M.P. Markanday, Aged About 30 Years R/o Zone- 3, Road No. 7-B, New Adarshnagar Durg, Tahsil And District- Durg, Chhattisgarh.

---- Applicant**Versus**

- State Of Chhattisgarh Through Police Of Police Station Utai, District- Durg, Chhattisgarh.

----Non-applicant

For Applicant : Shri H.S. Ahluwalia, Advocate.
 For Non-applicant/State : Shri Vinod Tekam, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order On Board****05/01/2018**

1. Apprehending arrest in connection with Crime No.431/2017, registered at Police Station – Utai, District – Durg (C.G.) for offence punishable under Section 376 of the IPC, applicant has preferred this application for grant of anticipatory bail.
2. It is submitted by the learned counsel for the applicant that the applicant is innocent and has been falsely implicated in this case. The facts of the case are these, that the applicant and the prosecutrix got engaged to marry on 24-04-2016. It was agreed that the applicant was studying and shall appear for competitive examinations, hence the marriage will be performed after the applicant succeeds in getting some appointment. The applicant had been trying his luck in competitive examinations, in the meanwhile, the prosecutrix started pressurizing the applicant to perform the

marriage soon. Even if it is assumed that the applicant and the prosecutrix had physical relation, then the relationship was consensual, the prosecutrix herself is major lady and capable of giving the consent. Consequent to these developments of things, a dispute arose between both the families, because of which father of the applicant was compelled to file a complaint (Annexure-A/2) followed by lodging of FIR on 15-04-2017. It was then after due deliberation and concoction a false FIR was lodged against the applicant on 15-06-2017 by the prosecutrix against the applicant. It is submitted that because of pressure tactics applied by the prosecutrix side the applicant has lost his mental balance and is undergoing treatment. The documents of prescription of psychiatrist are annexed in record. It is submitted that the applicant is victimized in the case and no case is made out against him. Learned counsel for the applicant has placed reliance in the order passed by the Bombay High Court in the matter of **Mahesh Balkrishna Dandane Versus State of Maharashtra**, reported in 2014 4 Crimes (HC) 37 and the judgment passed by Hon'ble the Supreme Court in the matter of **Deepak Gulati Versus State of Haryana**, reported in (2013) 7 SCC 675, wherein it has been clearly held that physical relationship on the basis of promise to marriage does not amount to rape. Hence, it is prayed that the applicant may be benefited with grant of anticipatory bail.

3. Learned counsel for the non-applicant/State opposes the application and the submission made in this respect. It is submitted that as per the statement of the prosecutrix under Section 161 and

164 Cr.P.C., there is clear and categorical statement of the prosecutrix against the applicant that she was forcefully subjected to sexual intercourse by the applicant without her consent and willingness. Hence, prima facie, case of rape is made out against the applicant, because of which he is not entitled for grant of anticipatory bail.

4. I have heard the learned counsel for the parties and perused the case diary.

5. As per the case, the prosecutrix has lodged the FIR against the applicant stating that subsequent to engagement the applicant started visiting the prosecutrix and forced her to submit for sexual intercourse. This continued for some time and then the applicant refused to marry her, because of which, the FIR has been lodged.

6. Considered on the submissions made and contents of the case diary. It is not disputed that the applicant and the prosecutrix were engaged to marry each other and that some development and dispute arose between the parties, because of which, the applicant side had also to resort to police authorities and thereafter FIR was lodged against the applicant subsequent to the complaint and FIR lodged by the father of the applicant. Age of the prosecutrix is more than 25 years. Reliance has been placed by the applicant on other documents, transcription of phone record etc. which needs to be verified in the investigation and it may be a good defence for the applicant. For the present, I am of this opinion, that a case is made out in favour of the applicant for grant of anticipatory bail.

7. Accordingly, the anticipatory bail application is 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 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 Investigating Officer. The applicant shall also abide by the following conditions :

- (i) that the applicant shall make himself 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.

8. Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge