

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.(A) No. 1605 of 2018**

Jindlal Rajwade S/o Banarasi Ram Aged About 38 Years Caste Rajwar
Occupation Constable R/o Anvadih ,police Station Surajpur Tahsil And
District -Surajpur Chhattisgarh., District : Surajpur, Chhattisgarh.

---- Applicant**Versus**

State Of Chhattisgarh Through Station House Officer , Outpost Basdeyi
Police Station Surajpur District Surajpur Chhattisgarh., District : Surajpur,
Chhattisgarh.

---- Respondent

For the Applicant : Shri Shakti Raj Sinha, Advocate.
For the Respondent/State : Shri Anant Bajpai, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****11.12.2018**

1. Heard on application under Section 438 of the Code of Criminal Procedure, 1973.

2. This is the first bail application filed under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail to the applicant who is apprehending arrest in connection with Crime No. 285 of 2018, registered at Outpost Basdeyi, Police Station – Surajpur, District – Surajpur, Chhattisgarh for the offences punishable under Sections 366 and 376 of the Indian Penal Code.

3. It is submitted by counsel for the applicant that the applicant has been falsely implicated in this case. The applicant and the prosecutrix both had been consenting party in the physical relation which they had. The

prosecutrix was earlier married to two persons Vifal Ram and Jholu and subsequent to that, she was come in contact with the applicant. Hence, this applicant denies the parentage of the child born to the prosecutrix. After passing of more than 8 years, FIR has been lodged. Hence, it is prayed that this applicant may be benefited with grant of anticipatory bail.

4. Learned State counsel opposes the bail application and the submissions made in this respect. It is submitted that the prosecutrix is a deaf-and-dumb woman and was also a minor at the time of incident. Hence, this applicant has exploited her sexually because of her physical condition and then rejected her. Hence, no case is made out for grant of anticipatory bail to the applicant.

5. Heard counsel for both the parties and perused the case diary.

6. FIR has been lodged on 24.8.2018 by the mother of the prosecutrix stating that about 9 years prior to lodging of FIR, the applicant allured the prosecutrix who was deaf-and-dumb and then had physical relation on number of occasions which resulted in pregnancy and birth of one male child. Subsequent to that, whenever the prosecutrix used to propose for marriage the applicant used to refuse her and then ultimately, FIR was lodged.

7. Considered the entire material present in the case-diary and the delay in lodging the FIR. The prosecutrix is though deaf-and-dumb but she is not mentally unsound. There is no such statement that she was forced to have physical relation with the applicant. It is submitted on behalf of the applicant

that the applicant is ready for the examination of DNA test in the investigation to find out the parentage of the child born to the prosecutrix. Hence, for these reasons, I feel inclined to grant anticipatory bail to the applicant.

8. Accordingly, the anticipatory bail application is allowed and 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 give appearance before the Investigating Officer and cooperate with the investigation by submitting for the DNA as required in this case. 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 them 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/-

(Rajendra Chandra Singh Samant)
Judge