

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 409 of 2019

- Vinay Kumar Sahu S/o Ramlakhan Prasad Sahu Aged About 32 Years
R/o Laxmipur, P. S. Madipur, Surguja Chhattisgarh.

---- Applicant

Versus

- State of Chhattisgarh Through The Station House Officer, Police
Station Ambikapur, District Surguja Chhattisgarh.

---- Respondent

For Applicant : Mr. Jitendra Shrivastava, Advocate.
For Respondent/State : Mr. Himanshu Sharma, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

27/03/2019

1. The applicant has preferred this bail application under Section 438 of Cr.P.C. apprehending his arrest in connection with Crime No.231/2017 registered at Police Station-Ambikapur, District-Surguja(C.G.), for the offence punishable under Sections 376(B) and 377 of Indian Penal Code.
2. Learned counsel for applicant submits that applicant is innocent and has been falsely implicated in this case. No case is made out against this applicant. The complainant in this case is legally wedded wife of the applicant. Because of matrimonial dispute she is living separately and making false allegation against the applicant. The complainant has made no allegation regarding unnatural sexual intercourse in her

statement under Section 161 of CrPC, which shows the concoction of the case. Relying on the judgment of Nimeshbhai Bharatbhai Desai vs State of Gujarat in CR.M.A. No.26957/2017 and others order dated 2.4.2018, it submitted that no case is made out for the prosecution of this applicant, therefore, this application be allowed and applicant may be granted anticipatory bail.

3. Learned State counsel opposes the bail application and the submissions made in this respect. It is submitted that serious allegation has been made by the complainant, who is although his wife, that while she was living separately from the applicant she was raped and also subjected to unnatural sexual intercourse, therefore, applicant is not entitled for grant of anticipatory bail.
4. Heard both the parties and perused the case diary.
5. As per the FIR lodged, soon after the marriage of the applicant with prosecutrix, she found out that the applicant is having illicit relations with other women because of which dispute arose between them. The applicant then separated himself from the complainant and made separate arrangement since the year 2014, and since then both of them did not have any physical relation. Thereafter, the applicant has also filed a divorce petition in the year 2016, which is pending. The prosecutrix has alleged that on 24.2.2017, the applicant came to her and without her willingness and consent forcefully raped her, thereafter, he again came on 24.4.2017 & 25.4.2017 and had unnatural anal intercourse with her because of which FIR has been lodged.
6. In the FIR lodged and in the statement U/s 164 CrPC, the prosecutrix has stated about the matrimonial dispute and the main allegation is

this, that on 22.4.2017 the applicant raped her without her willingness and consent and then on 24.4.2017 & 25.4.2017 he forcefully committed the unnatural anal intercourse with the prosecutrix.

7. Although the prosecutrix has omitted to make statement of anal intercourse in her statement under Section 161 of CrPC, but the statement is present in her complaint and FIR and also her statement under Section 164 of CrPC, therefore, looking to the presence of evidence of unnatural sexual intercourse against the applicant, I do not feel inclined to allow this application.

8. Accordingly, the anticipatory bail application is rejected.

Sd/-
(Rajendra Chandra Singh Samant)
Judge