

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.(A) No. 929 of 2019**

Manoj Kumar Jaiswal S/o Abhay Ram Jaiswal Aged About 46 Years By
Caste Kalar, R/o Village Araud, Tahsil Charama, District Uttar Bastar Kanker
Chhattisgarh.

---- Applicant**Versus**

State Of Chhattisgarh Through Police Station Charama, District Uttar Bastar
Kanker Chhattisgarh.

---- Respondent

For the Applicant : Shri Parag Kotecha, Advocate.
For the Respondent/State : Shri Adil Minhaj, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****05.09.2019**

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. 123 of 2016, registered at Police Station – Charama, District – Uttar Bastar Kanker, Chhattisgarh for the offences punishable under Sections 354, 376, 452, 450 and 354A the Indian Penal Code.

3. It is submitted by counsel for the applicant that the applicant has been falsely implicated in this case for the offence under Section 376 of the IPC which he is not committed. Initially, the FIR was lodged on 30.5.2016 on the

basis of which, the applicant was released on bail from the police station itself. Subsequently, the prosecutrix has given another statement on 10.10.2018 in which she has improved her earlier statement because of which, the offence under Section 376 of the IPC has been added. Hence, the applicant has apprehension that he may be arrested. Further, it is submitted that the prosecutrix has sworn an affidavit and the copy of which is filed alongwith bail application in which she states that she had earlier lodged FIR because of simple dispute and she does not want to prosecute this applicant. Hence, it is prayed that the applicant 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 according to the statement of the prosecutrix the offence under Section 376 of the IPC is made out, however, it is admitted that on making an enquiry regarding the affidavit, the police has reported that the prosecutrix has admitted swearing an affidavit in favour of the applicant. This applicant is not entitled for grant of anticipatory bail.

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

6. Firstly, the FIR was lodged against the applicant in which it was alleged that the applicant trespassed the house of the prosecutrix/ victim and then by use of physical force outraged her modesty. After passing of about two years, another statement of the prosecutrix has been recorded in which she has made another statement according to which, the offence is made out under Section 376 of the IPC.

7. Considering the fact that the initial FIR lodged against the applicant has been developed after two years and further, the prosecutrix has made a statement and sworn an affidavit in favour of the applicant, therefore, I am of the considered view that the present is a fit case where the applicant should be benefited with grant of anticipatory bail.

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 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