

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.(A) No. 1126 of 2019**

Devashish Shil, aged about 42 years, S/o Dulal Krishna Shil, By Caste Nai, R/o Banglapara, Narayanpur, District Narayanpur (CG).

---- Applicant**Versus**

State of Chhattisgarh, through Police Station City Kotwali, District Rajnandgaon (CG).

---- Non-applicant

For Applicant	: Mr. Parag Kotecha, Advocate
For Non-applicant	: Mr. Ravi Maheshwari, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****24.09.2019**

1. Apprehending arrest in connection with Crime No.272/2019, registered at Police Station City Kotwali, District Rajnandgaon for the offence punishable under Sections 376 and 506 of Indian Penal Code, the applicant has filed this first bail application under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail.
2. Case of the prosecution, in brief, is that prosecutrix was aged about 23 years. She is a resident of village Sivni. She is studying in Nursing College. She was living in a Hostel. The applicant is the husband of her friend namely Bhartiya Ramteke. He used to call her from the hostel to meet with him giving threat to kill her and spoil her career. Due to fear and shock, she used to come to meet him from the hostel. In the year 2016, he took her in a hotel at Raipur and committed rape with her. He used to blackmail her showing her naked photos, which were taken in his mobile. Lastly in the year 2018, he committed forcible sexual intercourse with her in the lodge at Rajnandgaon.
3. Counsel for the applicant submitted that the applicant is an innocent person and has been falsely implicated in the case. He submitted that the prosecutrix is aged about 23 years old. She lodged FIR on 10.05.2019. There is huge delay in lodging F.I.R. She was consenting party. There was intimacy between her and the applicant. In support of case, he drew my attention on some photographs and

messages, which are the part of bail application. He further submitted that she had sent vulgar messages to him by whatsapp.

4. On the other hand, counsel for the State opposed the bail application and submitted that no criminal antecedent is reported against the applicant as per the police case diary.
5. To substantiate the argument, counsel for the applicant placed reliance upon the orders of co-ordinate bench of this Court dated 25.07.2018 in the matter of **Malayjeet Khuntia Vs. State of Chhattisgarh** in M.Cr.C.A. No.598/2018, in the matter of **Diwaker Kumar Soni Vs. State of Chhattisgarh** dated 07.02.2018 in M.Cr.C.A. No.1103/2017, in the matter of **Pradeep Kumar Arya Vs. State of Chhattisgarh** dated 06.10.2018 in M.Cr.C.(A) No.1234/2018, in the matter of **Raman Sharma Vs. State of Chhattisgarh** dated 13.07.2018 in M.Cr.C.A. No.633/2018, in the matter of **Jitendra Kumar Asaiya Vs. State of Chhattisgarh** dated 03.05.2016 in M.Cr.C.(A) No.408/2016. He further placed reliance upon the order of Hon'ble Bombay High Court in the matter of **Akshay Manoj Jaisinghani Vs. State of Maharashtra** reported in (2017) 1 CriCC 847: (2017) 1 RCR (Criminal) 715.
6. To substantiate the argument, counsel for the applicant further placed reliance upon the judgments of Hon'ble Supreme Court in the matter of **Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra & Others** reported in **AIR 2019 Supreme Court 327**. He further placed reliance upon the judgment of Hon'ble Supreme Court in the matter of **Pramod Suryabhan Pawar Vs. State of Maharashtra & Anr.** reported in **AIR 2019 Supreme Court 4010**.
7. In the aforesaid orders in the matters of **Malayjeet Khuntia** (Supra), **Diwaker Kumar Soni** (Supra), **Pradeep Kumar Arya** (Supra), **Raman Sharma** (Supra), **Jitendra Kumar Asaiya** (Supra) co-ordinate bench of this Court has not laid down any legal principle regarding anticipatory bail.
8. The aforesaid order of Hon'ble Bombay High Court in the matter of **Akshay Manoj Jaisinghani** (Supra), the aforesaid judgment of Hon'ble Supreme Court in the matter of **Dr. Dhruvaram Murlidhar Sonar** (Supra), **Pramod Suryabhan Pawar** (Supra) are related to the matter where the consent of prosecutrix was obtained by promise to marry and whether it was given under misconception of fact and whether it

amounts as free consent. Moreover, the aforesaid judgments of Hon'ble Supreme Court are related with the quashing of F.I.R.

9. In the case in hand, the facts are totally different from the facts of aforesaid cases. In the case in hand, this is not situation that allegedly the consent of the prosecutrix was obtained by promise to marry. In the case in hand, prima facie it appears that prosecutrix was coming to meet with the applicant from the hostel under threat and shock.

10. Looking to the aforesaid facts and circumstances of the case, this Court finds that the applicant does not get any help from the aforesaid orders in the matters of **Malayjeet Khuntia** (Supra), **Diwaker Kumar Soni** (Supra), **Pradeep Kumar Arya** (Supra), **Raman Sharma** (Supra), **Jitendra Kumar Asaiya** (Supra) passed by co-ordinate bench of this Court, from the aforesaid order of Hon'ble Bombay High Court in the matter of **Akshay Manoj Jaisinghani** (Supra), from the aforesaid judgments of Hon'ble Supreme Court in the matters of **Dr. Dhruvaram Murlidhar Sonar** (Supra) and **Pramod Suryabhan Pawar** (Supra) regarding to grant of anticipatory bail.

11. After considering the above mentioned facts and circumstances of the case, this Court finds that this is not a fit case where the applicant be enlarged on anticipatory bail. Consequently, the anticipatory bail is rejected.

12. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)
JUDGE