

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.(A) No. 1218 of 2019**

Khikram Koshaley S/o Shri Vishambhar Koshaley Aged About 24 Years R/o Village Nachanpali, Police Station Kosir, Tahsil Sarangarh, District Raigarh Chhattisgarh.

---- Applicant**Versus**

State Of Chhattisgarh Through The Station House Officer, Police Station Sarangarh, Civil And Revenue District Raigarh Chhattisgarh.

---- Respondent

For the Applicant : Shri Udho Ram Koshaley, Advocate.
For the Respondent/State : Shri Sanjay Pathak, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****13.09.2019**

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. 277 of 2019, registered at Police Station – Sarangarh, District – Raigarh, Chhattisgarh for the offence punishable under Sections 323 and 498A of the Indian Penal Code.

3. It is submitted by counsel for the applicant that the applicant has been falsely implicated in this case. In fact, there had been no marriage between the applicant and the complainant on the date the incident has taken place. The applicant and the complainant both had dissolved their marriage

according to their caste custom on 26.3.2019, therefore, in absence of marriage, the offence registered against the applicant under Section 498A of the IPC shall not be maintainable and the offence registered against the applicant under Section 323 of the IPC is bailable in nature. 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 the stamp agreement regarding dissolution of marriage is not acceptable under law, therefore, the marriage is existing and offence under Section 498A of the IPC is made out. 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 by the complainant stating that she got married to the applicant about three years prior to lodging of FIR. As she was not able to conceive, the applicant started torturing, beating and abusing her, therefore, the complainant left her matrimonial home and started living in her parental home and thereafter, on 21.6.2019, the applicant came to her house and has assaulted and injured her. Hence, this case.

7. Considered the entire material present in the case-diary. After considering the possibilities of settlement in this case and also keeping in view the observations made by the Supreme Court in the cases of **Arnesh Kumar vs. State of Bihar** reported in (2014) 8 SCC 273 and **Rajesh Sharma vs. State of Uttar Pradesh and Others** reported in (2017) 8 SCALE 313, 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 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