

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 774 of 2020**

- Janak Prasad Pathak, S/o Late Shri G.P. Pathak, aged about 53 Years R/o Dharampura-1, Near Nirmal Sadan, P.S.- City Kotwali, Jagdalpur, District-Bastar, Chhattisgarh.

---- Applicant**Versus**

- State of Chhattisgarh, Through Police Station- Janjgir, District : Janjgir-Champa, Chhattisgarh.

---- Respondent

For Applicant	: Shri Shashank Thakur, Advocate.
For Respondent/State	: Shri Vivek Ranjan Tiwari, Addl. A.G.
For Objector	: Shri Surfaraz Khan, Advocate.

Hon'ble Shri Justice Arvind Singh Chandel**Order On Board****14/08/2020**

1. Heard through video conferencing.
2. The applicant has preferred the first bail application under Section 438 of Cr.P.C. for apprehending his arrest in connection with Crime No. 256/2020 registered at Police Station Janjgir, District : Janjgir-Champa, (C.G.) for the offence punishable under Sections 376, 506, 509-B of the Indian Penal Code and Section 3(2)(v) of SC/ST (Prevention of Atrocities) Act, 1989 (added later on as stated by

learned Additional Advocate General).

3. As per the case of the prosecution, prosecutrix is a married lady aged about 33 years. Her husband is working as Siksha Karmi. Prosecutrix herself is running an N.G.O. On 03.06.2020 a written complaint has been lodged by the prosecutrix against present applicant, the then District Collector, District - Janjgir-Champa, (C.G.) alleging therein that on 16.03.2020, for the first time when she went to the office of applicant for some work related to N.G.O., applicant took her mobile phone number. Thereafter, applicant used to contact her continuously by sending her whatsapp messages. Applicant used to send her vulgar messages and obscene videos through whatsapp in her mobile. When she made objection regarding sending vulgar messages and obscene videos, then applicant threatened her that by using his administrative power, he would expelled her husband from job. It is alleged that on 15.05.2020, applicant made phone call to the prosecutrix and called her to his office at 4:00 PM. When prosecutrix reached the office, she didn't find the applicant there. Then she made phone call to the applicant and told him that she is in office on which applicant told her to stay there. After some time, applicant reached to his office and called the prosecutrix to his chamber where applicant forcibly committed sexual intercourse with her. Thereafter, applicant threatened the prosecutrix and told her not to disclose the fact to anyone. It is further alleged that even after the alleged incident, applicant used to send her vulgar messages and obscene videos and also blackmailed her to send the images and videos of her private parts. The alleged act of sending vulgar messages continued till

23.05.2020. It is further alleged that after the incident of rape, applicant pressurized her and deleted the vulgar messages and obscene videos sent by him. On the basis of the written complaint made by the prosecutrix, initially offence under Sections 376, 506, 509-B of the I.P.C were registered. Since, prosecutrix belongs to member of Scheduled Caste Community, therefore, later on offence under Section 3(2)(v) of SC/ST (Prevention of Atrocities) Act was added (as stated by learned Additional Advocate General).

4. Learned Counsel appearing for the applicant submits that the applicant is innocent and has been falsely implicated in the present case. He further submits that the entire case of the prosecution is false and fabricated. Entire story narrated by the prosecutrix in her F.I.R. is suspicious. It is further submitted that virtually prosecutrix who is running an N.G.O. used to meet the applicant several times regarding her work. On the date of incident i.e. 15.05.2020, prosecutrix met with the applicant in his chamber. As stated by the prosecutrix, the alleged act of rape was committed in the chamber of the applicant, appears to be doubtful and suspicious. He further submits that applicant is a District Magistrate and the entire Collectorate office premises is under strict and close CCTV surveillance. At the time of alleged incident also, pandemic COVID-19 was at its peak and on the date of alleged incident, a train full of migrants was coming to Janjgir, therefore, office of the District Magistrate-cum-Collector was flooded with the government officials, visitors and other members of society engaged in the various relief works/ arrangement of migrant workers/ arrangement with respect to

food/ stay and medical facility and arrangements of quarantine centers, it is impossible for the applicant of having involved in any such act, as alleged by the prosecutrix. On the date of incident, applicant went to his office at 5:00 PM and had also met with the prosecutrix in his chamber. It is not possible for the applicant to commit alleged act of rape with the prosecutrix when office staff and other officials are all around in the office. He further submits that incident occurred on 15.05.2020 and on 26.05.2020 applicant was transferred and subsequently joined at the transferred place on 28.05.2020. Thereafter, to implicate the applicant falsely, on 03.06.2020, a false and fabricated F.I.R. has been lodged by the prosecutrix. The delay in lodging the F.I.R. is not explained properly. It is further submitted that if contents of the F.I.R. is taken as it is, it appears that prosecutrix was the consenting party. According to the Counsel appearing for the applicant, from the reasons mentioned above, *prima facie*, no offence under Sections 376, 506, 509-B of the I.P.C. are made out against applicant. Since, offence under Section 376 of the I.P.C. is not made out, therefore, offence under Section 3(2) (v) of SC/ST (Prevention of Atrocities) Act, 1989 is also not attracted. Looking to the above, it is prayed that the applicant may be enlarged on anticipatory bail.

5. Learned Additional Advocate General appearing for the State opposes the bail application. Firstly, he submits that, since offence under Section 3(2)(v) of SC/ST (Prevention of Atrocities) Act, 1989 has also been added against applicant, therefore, as provided in Section 18 of the Act, bail application submitted under Section 438 of Cr.P.C. is not

maintainable. Referring to the statements of witnesses namely Ravi Kashyap, Preeti, Bawa Singh Tekam recorded under Section 161 of Cr.P.C., he submits that from their statements, it is well-established that on the date of incident, the prosecutrix had visited in the chamber of present applicant. Further referring the report of the Cyber Cell, he submits that from the said report also, it appears that applicant and prosecutrix used to talk on mobile phones. It is further submitted that for conducting DNA test of the applicant, blood samples of the applicant is required for which his custodial interrogation is essential. Lastly, he submits that there are sufficient materials available against applicant on the basis of which alleged offences are made out against him. Thus, it is prayed that anticipatory bail application of applicant may be rejected.

6. Learned Counsel appearing for Objector supports the arguments advanced by the learned State Counsel. With regard to delay in lodging the F.I.R., he submits that though the prosecutrix is a major lady and there is delay in lodging the F.I.R. but from the statement of the prosecutrix it is clear that she was threatened and the alleged act was forcibly done with her saying that her husband would be expelled from job if she disclose the alleged act to anyone, and due to these reasons, the matter was not reported on the date of incident.
7. I have heard learned Counsel appearing for the parties and perused the material available.
8. Taking into consideration the submissions put-forth on behalf of the parties, considering the facts and circumstances of the case, evidence

collected by the prosecution and from the contents of the F.I.R. and other materials available on record, it appears that entire story narrated by the prosecutrix is suspicious because the prosecutrix is a major lady and from the contents of the F.I.R. it is clear that before and after the date of incident i.e. 15.05.2020, prosecutrix had neither informed her husband nor made any complaint regarding the alleged act committed by the applicant. From the contents of F.I.R., it also appears that prosecutrix was the consenting party. Further considering the fact that alleged incident occurred on 15.05.2020 and after transfer of the applicant i.e. on 26.05.2020, F.I.R. has been lodged on 03.06.2020. Moreover, the delay in lodging the F.I.R. is also not duly explained. From the contents of F.I.R, it also appears that there was relationship between the applicant and prosecutrix. Thus, the entire incident occurred on 15.05.2020 appears to be suspicious and offence registered against applicant under Section 376 of the I.P.C. appears to be doubtful. Therefore, offence under Section 3(2)(v) of SC/ST (Prevention of Atrocities) Act, 1989 is also not attracted and hence, the bar would not be attracted in the given facts. Considering the above circumstances, in my considered opinion, it is fit case for grant of anticipatory bail to the present applicant.

9. Accordingly, the present bail application is allowed.

10. It is directed that in the event of arrest of the applicant in connection with the aforesaid crime, he shall be released on anticipatory bail on furnishing a personal bond in the sum of Rs. 20,000/- with one solvent surety for the like sum to the satisfaction of the Arresting Officer/Presiding Officer of the concerned trial Court. He shall also

abide by all the following terms and conditions :

- (i) He 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 him from disclosing such fact to the Court,
- (ii) He shall not act in any manner which will be prejudicial to fair and expeditious trial, and
- (iii) He shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

Sd/-
(Arvind Singh Chandel)
Judge