

HIGH COURT OF CHHATTISGARH : BILASPUR

MCRCA No.910 of 2020

- Wilson Ekka S/o Benedik Ekka Aged About 27 Years Caste - Uraon,
Resident Of Village Kaliya, Police Station Narayanpur, Tahsil Bagicha,
District Jashpur Chhattisgarh., District : Jashpur, Chhattisgarh

---- **Petitioner**

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Station
Narayanpur, District Jashpur Chhattisgarh., District : Jashpur,
Chhattisgarh

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Respondent

(Application under Section 438 of the Code of Criminal Procedure)

Single Bench: Hon'ble Shri Manindra Mohan Shrivastava, J.

Present: - Shri JK Saxena, counsel for the applicant.
Smt. Fouzia Mirza, Additional AG for the State.

ORDER ON BOARD
(Passed on 01-12-2020)

Heard.

1. The applicant has preferred this application under Section 438 of Cr.P.C., apprehending his arrest in connection with Crime No.36/2020, registered at Police Station Narayanpur, District Jashpur for alleged commission of offence under Section 376, 313 of the IPC.
2. The case of the prosecution is that the applicant kept on sexually exploiting the prosecutrix on the false pretext of marriage, which amounts to commission of offence of rape.
3. Learned counsel for the applicant would argue that the applicant and the prosecutrix, even according to the prosecutrix own case, were having longstanding relationship for a period of about five years and it is only when the relations got strained, the prosecutrix was taken recourse to lodging of FIR to settle score with the applicant. He would also argue that the manner, in which, the prosecutrix has stated in her statement recorded under Section 164 of Cr.P.C. before the Magistrate shows that though, there are

allegations, initially, the applicant has stated the prosecutrix that he would be marrying with her and the applicant has later on started treating the prosecutrix as wife and developed relations on that basis and thereafter, there is no allegation that on the false pretext of marriage, relations were continued for five years. He would further submits that after the prosecutrix became pregnant, abortion had taken place, as a result thereof, dispute arose between the parties, which led to filing of FIR. He would further submits that irrespective of any other obligations, which the applicant may have, the present is not a case of commission of offence of rape.

4. On the other hand, learned State Counsel submits that the sexual relationship between the applicant and the prosecutrix were started in the May, 2015 as narrated by the prosecutrix in her statement under Section 164 of Cr.P.C. on the basis of assurance of marriage and this is continued for five years and the prosecutrix was under an interpretation that on one day or the other, the applicant would perform marriage with her and this is the main operative reason as to why the prosecutrix was giving her consent for sexual relations. The relationship between the applicant and the prosecutrix got strained when the prosecutrix became pregnant and abortion had also taken place, resultantly, FIR was lodged by the prosecutrix.

5. On prima facie consideration, it appears that the applicant and the prosecutrix both are major and according to the records of the prosecution, when the applicant and the prosecutrix entered into the relations way back in the month of May, 2015, the prosecutrix was major lady of sufficient maturity of age of 24 years. In the report and statement both, according to the prosecutrix, when the applicant entered into the sexual relations for the first time in the May, 2015, the prosecutrix was major. However, in a subsequent part of statement of the prosecutrix, she has stated that she and the applicant both were residing as husband and wife and in that capacity, they developed sexual relations and the situation seems to be worsened, when

abortion had taken place and the relations were got strained between them. Looking to the longstanding relationship of the applicant and the prosecutrix before lodging of FIR and the considerations as above, the present appears to be a fit case for grant of anticipatory bail on the principles laid down by the Supreme Court in the case of ***Siddharam Satlingappa Mhetre vs. State of Maharashtra and others***¹.

6. Accordingly, the application is allowed. It is directed that in the event of arrest of the applicant in connection with the aforesaid offence, he will be released on bail by the arresting officer on his furnishing a personal bond for a sum of Rs.25,000/- with two local surety for the like amount to the satisfaction of the arresting officer with following further conditions that:

- (i) the applicant shall make himself available for interrogation by a police officer as and when required;
- (ii) 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 him/her from disclosing such facts to the Court or to any police officer;

Certified copy as per rules.

SD/-
(Manindra Mohan Shrivastava)

J U D G E

1 (2011) 1 SCC 694