

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 1034 of 2020**

- Kabir Das S/o Prem Sai Aged About 35 Years Caste- Panika, Occupation- Panchayat Secretary, R/o Village- Karji, Tehsil- Baikunthpur, District- Koriya, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through- S.H.O., Police Station- Patna, District- Koriya, Chhattisgarh

---- Respondent

For Applicant	:	Shri Pushkar Sinha, Advocate
For State	:	Smt. Fouzia Mirza, Addl. A.G.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****15/12/2020**

Heard.

1. The applicant is apprehending his arrest in connection with Crime No.158/2020 registered at Police Station – Patna, District – Koriya CG) for alleged commission of offences under Section 376 (2) (n), 506 of IPC.
2. Prosecution case is that the prosecutrix lodged report in the police station on 16/07/2020 that the applicant entered into love affair with the prosecutrix and on 30/05/2019, she was taken to a temple and there, the applicant forcibly entered into marriage with the prosecutrix in presence of other persons and thereafter, he took the prosecutrix for registration of marriage and then against her wishes, he kept along with him for two months. Thereafter, the prosecutrix left the house, went to the house of her uncle and again on 01/11/2019, the applicant met her and took her to a hotel, kept her with him and sexually exploited. Finally, the prosecutrix lodged report on 16/07/2020.
3. Learned counsel for the applicant would submit that present is a case of complete false implication. He would submit that the applicant and the prosecutrix had an affair, they got married in a temple on 30/05/2019 and thereafter, they had gone for

registration of marriage also and since then, the applicant and the prosecutrix were living together until the prosecutrix was removed from the company of the applicant. It is submitted that the prosecutrix again came to the company of the applicant in November, 2019 and thereafter, parents of the prosecutrix are coming in the way and false report has been lodged as late as on 16/07/2020. He would submit that after marriage was solemnized between the parties, the parents of the prosecutrix were opposing and the matter was reported to the police and also SDM, Baikunthpur and when the prosecutrix was called there, she gave statement before the Sub-Divisional Magistrate that she had an affair with the applicant, they had married, she was living with the applicant as per her own wishes and she does not wish to go along with her parents. It is also submitted before the Magistrate that even though the applicant is already married, yet she wants to reside with him in his house. The statement of her parents was also recorded and after completing the enquiry, the matter was closed and now, after more than 1 year and 2 months, present report has been lodged. Therefore, the applicant may be given benefit of anticipatory bail.

4. On the other hand, learned State counsel would argue that initially, the prosecutrix was examined by the Sub-Divisional Magistrate on 31/05/2019 in which, she stated that she married with the applicant and willing to reside with the applicant and does not want to go along with her parents. Thereafter, a report was lodged on 16/07/2020 stating that all that was done, was against her wishes and she was forced to marry and reside with the applicant. Therefore, it is submitted that whatever was done with the prosecutrix was against her wishes and not free consent and therefore, offence of rape is made out.

5. On prima facie considerations, this Court, after going through the memorandum dated 31/05/2019 before the Station House Officer, Police Station – Patna, statement of the prosecutrix recorded by the Executive Magistrate, Patna, statement of her parents and memo dated 05/12/2020 of the Station House Officer, Patna, it is revealed that the applicant and the prosecutrix were in affair and marriage was also solemnized on 30/05/2019 and due to intervention of the parents, enquiry was made by the Executive Magistrate and before him, the prosecutrix stated that on 30/05/2019, she married the applicant and she is willing to reside with the applicant and does not wish to go along with her parents. The statement of the parents was also recorded by the Executive Magistrate wherein it has been stated that as the prosecutrix is willing to go along with the applicant having married him, they are not willing to keep the prosecutrix with them. Present report has been lodged after 1 year 2 months. Now, it is alleged that all that was done was against the wishes of the prosecutrix and that the applicant has

committed rape on her by falsely treating her to be his wife. Therefore, present is a fit case for grant of anticipatory bail to the applicant.

6. Accordingly, the application is allowed. It is directed that in the event of arrest, the applicant shall be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- with two local sureties for the like sum to the satisfaction of the arresting officer and he shall abide by all the following terms and conditions:-

- (i) that the applicant shall make himself available for interrogation by a Police Officer as and when required;
- (ii) that 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 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.

Certified copy as per rules.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge