

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.699 of 2020**Order Reserved on : 29.10.2020Order Passed on : 4.11.2020

Virendra Singh, son of Late Shri Rameshwar Singh, aged about 45 years,
resident of Police Line Quarter No.20, Police Station Civil Line, District
Bilaspur, Chhattisgarh

---- Appellant**versus**

State of Chhattisgarh through Station House Officer, Police Station Sirgitti,
District Bilaspur, Chhattisgarh

---- Respondent

For Appellant	:	Shri Umakant Singh Chandel, Advocate
For Respondent/State	:	Shri H.S. Ahluwalia, Dy. Advocate General
For Objector/Prosecutrix	:	Shri Awadh Tripathi, Advocate

Hon'ble Shri Justice Arvind Singh Chandel**C.A.V. ORDER**

- The instant appeal has been preferred by the Appellant under Sections 14-A(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (henceforth 'the PoA Act') against the order dated 24.7.2020 passed by the Additional Sessions Judge (FTC), Bilaspur in Bail Application No.956 of 2020 relating to Crime No.301 of 2020 registered at Police Station Sirgitti, District Bilaspur for offence punishable under Sections 376(2)(n) and 506 of the Indian Penal Code and Section 3(2)(v) of the PoA Act. By the impugned order, the Learned Additional Sessions Judge has dismissed the bail

application moved by the Appellant under Section 438 of the Code of Criminal Procedure.

2. Case of the prosecution, in brief, is that age of the prosecutrix is above 30 years. The Appellant is also aged about 45 years. He is working as a Traffic Constable and is a married person having wife and three children. On 2.7.2020, the prosecutrix made a written complaint against the Appellant. It is alleged that for the last 12 years the prosecutrix is living in Tifra, Bilaspur in a rented house and is working with one Panchvati Herbal Company. In the year 2016, a love relationship developed between her and the Appellant. At that time, the Appellant had told her that he was a divorcee and his two children were residing separately with their mother and on the false pretext of marriage the Appellant developed physical relationship with her and this relationship continued upto the year 2018. Thereafter, the prosecutrix went to the house of the Appellant where she found that the wife and the children of the Appellant were residing at the house of the Appellant. When the prosecutrix told to the wife of the Appellant about her relationship with the Appellant then the wife of the Appellant and his daughter committed *marpeet* with the prosecutrix. On this, she returned from there and ended her relationship with the Appellant. It is further alleged that 6 months thereafter, the Appellant gave her a telephonic call and apologised for his mistake and assuring her that he will soon obtain a divorce from his wife and on this pretext he again developed physical relationship with her. Finally, on 29.6.2020, the Appellant ended his relationship with the prosecutrix and he also refused to marry her and on giving him phone call by the prosecutrix he threatened her of life. On the basis of the

said written complaint of the prosecutrix, First Information Report has been registered against the Appellant. Apprehending his arrest, the Appellant moved an application under Section 438 of the Code of Criminal Procedure before the Learned Additional Sessions Judge (FTC) for grant of anticipatory bail, which has been rejected by the impugned order dated 24.7.2020. Hence, this appeal.

3. Shri Umakant Singh Chandel, Learned Counsel appearing for the Appellant submitted that the Appellant has been falsely implicated in the case. He is innocent. The prosecutrix is a married woman and she is residing separately from her husband without giving him divorce. The Appellant is also a married person having wife and three children and is residing with them together. Since both the Appellant and the prosecutrix are married persons and despite the fact that the prosecutrix is aware since beginning that the Appellant is a married person she developed physical relationship with the Appellant, the physical relationship would have been developed between them on the pretext of marriage is *prima facie* not established. Since *prima facie* offence under Section 376(2)(n) of the Indian Penal Code is not made out against the Appellant, the offence under Section 3(2)(v) of the PoA Act is also not made out. Thus, the bar created under Section 18 of the PoA Act would not apply to the instant case. Despite there being these facts, the Trial Court has wrongly rejected the bail application of the Appellant. Thus, it was prayed that the Appellant may be admitted to the benefit of anticipatory bail.
4. Shri H.S. Ahluwalia, Learned Deputy Advocate General appearing for the Respondent/State and Shri Awadh Tripathi, Learned Counsel appearing for the Objector/prosecutrix jointly opposed the bail

application. Learned Counsel Shri Awadh Tripathi submitted that divorce had taken place between the prosecutrix and her husband and thereafter she started living alone. The Appellant, telling her himself to be a divorcee, on the pretext of marriage, developed physical relationship with her. In the year 2018, when the prosecutrix came to know that the Appellant is a married person, she ended her relationship with him. Six months thereafter, the Appellant again influenced her emotionally and telling her that he will give divorce to his wife, again developed physical relationship with her. But, later on, he refused to marry her. It was jointly submitted by Shri Awadh Tripathi and Shri H.S. Ahluwalia that there is sufficient material available against the Appellant on record on the basis of which *prima facie* case under Section 376(2)(n) of the Indian Penal Code, which is punishable with imprisonment for life, is made out. Since beginning the Appellant is aware of the fact that the prosecutrix is a member of Scheduled Caste, therefore, offence under Section 3(2)(v) of the PoA Act is also *prima facie* made out. It was further jointly submitted by Shri Tripathi and Shri Ahluwalia that looking to the provision of Section 18 of the PoA Act, the bail application of the Appellant has rightly been rejected by the Learned Additional Sessions Judge.

5. I have heard Learned Counsel appearing for the parties. I have also minutely perused the impugned order, the contents of FIR, statements of the prosecutrix recorded under Sections 161 and 164 of the Code of Criminal Procedure, one Ikrarnama dated 14.7.2011 submitted on behalf of the prosecutrix and other material available.
6. Having heard Learned Counsel appearing for the parties and having perused all the documents placed before me, it appears that marriage

of the prosecutrix was performed with one Mukesh Bansor in the year 2004 and no legal divorce has yet taken place between them. Though the aforesaid Ikrarnama dated 14.7.2011, according to which by mutual consent of the prosecutrix and her husband Mukesh Bansor dissolution of their marriage had taken place on 14.7.2011, has been submitted on behalf of the prosecutrix, this Ikrarnama bears signatures of only husband Mukesh Bansor and one witness namely Krishna Kumar. This Ikrarnama does not bear signature of wife/prosecutrix and she is not a party to the Ikrarnama. Therefore, on the basis of this Ikrarnama, it is not established that any divorce has legally taken place between them. In these circumstances, the prosecutrix is still a legally wedded wife of Mukesh Bansor. From the contents of the FIR and the statement of the prosecutrix recorded under Section 164 of the Code of Criminal Procedure, it also appears that in the year 2018 the prosecutrix came to know that the Appellant is a married person and is living with his wife and three children. At that time, she had ended her relationship with the Appellant. At that time, she did not take any action against the Appellant. It appears that the prosecutrix condoned the Appellant for the acts done to her by him till the year 2018. Six months thereafter, when again relationship started between them, at that time, the prosecutrix was well aware of the fact that the Appellant is a married person and is living with his wife and three children. But, despite knowing these facts, she again allowed the Appellant to develop physical relationship with her. Therefore, at this stage, it cannot be said that this relationship was established between them on the pretext of marriage. From the material available on record, it appears that physical relationship was developed between the two married

persons without obtaining legal divorce by them from their spouse. Thus, it cannot be said that this relationship was developed on the false pretext of marriage. Therefore, from the material available on record, in my considered view, *prima facie* offence under Section 376(2)(n) of the Indian Penal Code is not made out. Therefore, the offence under Section 3(2)(v) of the PoA Act is also not made out. In conclusion, the Appellant deserves grant of anticipatory bail.

7. Accordingly, the appeal is allowed.
8. It is directed that in the event of arrest of the Appellant in connection with the aforesaid crime, he shall be released on anticipatory bail on his furnishing a personal bond in the sum of Rupees Fifty Thousand with one solvent surety for a sum of Rupees Fifty Thousand to the satisfaction of the Arresting Officer/Presiding Officer of the concerned Trial Court. The Appellant shall fully cooperate with the investigation and 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