

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.744 of 2020**

Devnarayan Yadav S/o Ramprasad Yadav, Aged About 26 Years R/o Village Mankepi, P S Shankargarh, District Balrampur Ramanujganj Chhattisgarh

---- Appellant**Versus**

State Of Chhattisgarh Through The Station House Officer, Police Station, Ajak, Balrampur District Balrampur Ramanujganj Chhattisgarh.....

(Note- In The Cause Title Of The Rejection Order, The P S Has Been Mentioned As Shankargarh Whereas In Para 3 Of The Order Sheet The P S Has Been Mentioned As Ajak, Balrampur, District : Balrampur, Chhattisgarh)

---- Respondent

For Appellant	:	Shri Jitendra Shrivastava, Advocate
For Respondent/State	:	Shri Lalit Jangde, Dy. G.A.
For Objector	:	Shri Rakesh Kumar Jha, Advocate

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava**Order on Board****11/12/2020**

Heard.

1. This appeal has been filed by the appellant against order dated 28.05.2020 passed by Special Judge (Atrocities) Balrampur, by which, the appellant's application for grant of anticipatory bail has been rejected.
2. The appellant is apprehending his arrest in connection with Crime No.9/2020 registered at police station–Ajak Balrampur, District Balrampur Ramanujganj (C.G.) for alleged commission of offence under Section 376 (2)(n) of IPC and Section 3(2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act of 1989').
3. The prosecutrix lodged written complaint against the present appellant alleging that the appellant started talking to her on mobile phone and gradually he entrapped the prosecutrix in his love and thereafter giving an assurance that in future he will perform marriage, started sexually exploiting her since last 3 years prior to the date of lodging of FIR. It was also alleged

that in course of time, in the year 2009, the prosecutrix also became pregnant due to relationship but the appellant got it also aborted. According to the prosecutrix in this manner, the appellant has been sexually exploiting him on the false pretext of marriage.

4. Learned counsel for the appellant would submit that the appellant is being involved in the alleged commission of offence by the prosecutrix whereas the appellant and the prosecutrix both are major and even according to the prosecutrix, the appellant and the prosecutrix had a long standing live-in and sexual relationship. He would submit that the prosecutrix has stated in her 161 Cr.P.C. and 164 Cr.P.C. statements regarding she having stayed with the appellant also for sometime. The appellant and prosecutrix having strained relations in course of time has been made a basis to lodge FIR against the present appellant. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Prathvi Raj Chauhan Vs. Union of India & others, 2020(4) SCC 727** and various orders passed by this Court in number of cases, reference of which has been given in Annexure A/4 collectively, learned counsel for the appellant would submit that even in such cases, despite bar under Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act of 1989'), where no prima facie case is made out, relief under Section 438 Cr.P.C. may be granted in appropriate cases.
5. On the other hand, learned counsel for the State and Objector would oppose the prayer for grant of bail raising objection with regard to maintainability of the application stating that in view of provision contained in Section 18 of the Act of 1989 is not maintainable. It is submitted that the allegation is of commission of grave offence and therefore, only on that ground, the application needs to be rejected and has been rightly rejected by the trial Court. It is next submitted that though the prosecutrix has stated regarding long standing relationship between the appellant and the prosecutrix, the basis of relation was an assurance and promise by the appellant that in future, he will perform marriage. The act of the appellant in denying marriage shows that whatever was being done by the appellant was under false pretext of marriage, therefore, prima facie case is made out. It is also submitted that in the year 2019 the prosecutrix had become pregnant but the appellant got aborted also. These allegations prima facie make out a case and therefore, the application has been rightly rejected.

6. As far as maintainability of the bail application is concerned, the Hon'ble Supreme Court in a recent judicial pronouncement in the case of **Prathvi Raj Chauhan (supra)** had occasion to consider the maintainability of Section 438 Cr.P.C. application on the face of Section 18 of the Act of 1989. It was held as below :

“10. Concerning the applicability of provisions of Section 438 Cr.P.C, it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by Section 18 and 18(A)(i) shall not apply. We have clarified this aspect while deciding the review petitions. ”

32. I would only add a caveat with the observation and emphasize that while considering any application seeking pre-arrest bail, the High Court has to balance the two interests: i.e. that the power is not so used as to convert the jurisdiction into that under Section 438 of the Criminal Procedure Code, but that it is used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR, and further also that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. I consider such stringent terms, otherwise contrary to the philosophy of bail, absolutely essential, because a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament.”

7. Therefore, in appropriate cases, benefit of anticipatory bail could be admitted to the appellant and there is no absolute bar.
8. This Court in large number of cases in similar circumstances of similar allegation where accused and the prosecutrix had long sexual relationship, admitted the appellant to benefit of anticipatory bail involving offences as are leveled in the present case under the Act of 1989.
9. Conjoint reading of the FIR, 161 Cr.P.C. and 164 Cr.P.C statements of the prosecutrix show that on prosecutrix's own statement, the appellant and the prosecutrix were having a long relationship of about 3 years prior to the filing of FIR, this long sexual relationship between the prosecutrix and appellant, according to the prosecutrix, resulted in pregnancy in 2019, which is said to have been aborted. The appellant and prosecutrix both are major. There is considerable force in the submission of learned counsel for the appellant that the allegation of sexual relationship on the false pretext of marriage leveled after a long period of relationship of about 3 years itself is an indicative of false implication.
10. Therefore, considering the aforesaid circumstances of the case and the law laid down by the Hon'ble Supreme Court in the case of *Prathvi Raj (supra)*

and many other judgments which have been cited, which relied upon by learned counsel for the appellant, present is a fit case for grant of bail to the appellant.

11. Accordingly, the appeal is allowed. Impugned order is set aside, it is directed that in the event of arrest, the appellant 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 amount to the satisfaction of the arresting officer, with following further conditions that:-

a) the appellant shall make himself available for interrogation by the police officer as and when required;

b) the appellant 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;

Certified copy as per rules.

Sd/-
(Manindra Mohan Shrivastava)
Judge