

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 24 of 2021**

- Hemant @ Hemlal Sahu, S/o Shri Biselal Sahu, aged about 31 years, R/o Sector 27, New Raipur, PS Rakhi, Tehsil and District Raipur (CG)

---- Applicant

Versus

- State Of Chhattisgarh Acting Through SHO, Police Station Khamardih, District Raipur (CG)

---- Non-Applicant

For Applicant : Shri Lukesh Kumar Mishra, Advocate.
For Non-Applicant : Shri Arijit Tiwari, Panel Lawyer.
For Objector : Shri Malay Shrivastava, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****02/03/2021 :**

1. The applicant has preferred this application for grant of anticipatory bail as he apprehends his arrest in connection with Crime No.218/2020, registered at Police Station Khamardih, District Raipur for offence punishable under Section 376 of the IPC.
2. The prosecutrix, aged about 34 years, was working as Cook in different colonies. She came in contact with the applicant in the year 2012 and since thereafter they developed an affair and the applicant used to commit sexual intercourse on promise to marry. However, on 4.2.2018, the applicant got engaged to one Santoshi Sahu and eventually married the said girl on 18.4.2018. The said affair between the applicant and the prosecutrix was paused for some time, as the applicant went out of Raipur.

3. It is alleged that in January, 2020, the applicant came to Raipur and again committed forcible sexual intercourse on promise to marry. However, thereafter the applicant stopped responding to the mobile calls of the prosecutrix and whenever she used to call from different numbers, the applicant blocked all those numbers.
4. Learned counsel for the applicant would submit that it is a consensual affair between the two adults and promise to marry did not continue since after the applicant's marriage.
5. Learned State Counsel and learned counsel for the Objector would vehemently oppose the prayer for grant of anticipatory bail. According to them, the applicant promised the prosecutrix that he would marry her and have two wives and would maintain both of them together. Thus consensual exploitation was on promise to marry. Therefore, ingredients of offence under Section 376 of the IPC are available and the applicant is not entitled to be released on anticipatory bail.
6. Having heard learned counsel for the parties and on perusal of the case diary, I am inclined to release the applicant on anticipatory bail for the reason that initial deception and commission of rape on promise to marry started from 2012 came to an end when the applicant got engaged with another girl namely, Santoshi Sahu on 4.2.2018 and this was known to and permitted by the prosecutrix. She did not raise any protest nor lodged any FIR against the applicant when he was engaged with Santoshi Sahu and later on married her on 18.4.2018. Even after the applicant's marriage with Santoshi Sahu, the prosecutrix did not react nor lodged an immediate FIR when the applicant shifted to Gariyaband. It is only when the applicant returned to Raipur in January, 2020 and the prosecutrix was again sexually exploited on promise to marry and later the applicant stopped responding to her calls, the present FIR has been lodged. Even in this FIR, the prosecutrix says that she has lodged the FIR because the applicant has stopped talking to her.

7. Deception or sexual exploitation on promise to marry may not continue when the applicant got married to another girl on 18.4.2018. It is unthinkable that a lady would agree to marry a person knowing that he already has a wife. Acceding to the request for sexual exploitation with a married man may or may not, in the given set of facts, constitute an offence under Section 376 of the IPC. Although it will be seen by the trial Court at the time of framing of charge and holding of trial, but considering the affair from 2012-2018, intervening marriage of the applicant with another girl and then again consensual sex and further looking to her statement recorded at Mahila Thana Police, Raipur on 27.11.2020, I am inclined to extend the benefit of anticipatory bail to the applicant.
8. Accordingly, the application is allowed and it is directed that in the event of arrest of the applicant, he shall be released on anticipatory bail on his executing a personal bond for a sum of Rs.50,000/- with one surety in the like sum to the satisfaction of the arresting officer with the following conditions:-
- (i) he shall not influence the witnesses during trial.
 - (ii) he shall make himself available for interrogation by a police officer as and when required;
 - (iii) 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.

However, it is made clear that whatever observations made hereinabove in this order shall not be construed as an opinion on the merits of the case by the trial Court.

Sd/-
Judge
(Prashant Kumar Mishra)