

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 965 of 2021**

- Jitendra Kumar Dhiwar, S/o Dilip Kumar Dhiwar, aged about 30 Years, R/o Doman Hill, Chirmiri, District Koriya, Chhattisgarh.

----Applicant**Versus**

- The State of Chhattisgarh, Through the Station House Officer, Police Station Masturi, District Bilaspur, Chhattisgarh.

----Non-applicant

For Applicant	Shri Satish Gupta, Advocate.
For State	Shri Vimlesh Bajpai, Government Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Order on Board**25/03/2021**

1. The applicant has preferred this application under Section 439 of Cr.P.C. as he has been arrested in connection with Crime No.16/2021 registered at Police Station Masturi, District Bilaspur, C.G. for the offence punishable under Section 376 of Indian Penal Code.
2. Allegation against the applicant by the prosecutrix is that on the pretext of marrying her, applicant committed sexual intercourse with her. She also alleged that she knew the applicant for the last one year prior to lodging of the FIR i.e. 13.01.2021 and on 18.02.2020 applicant came to her house, stayed there for a month and continuously made physical relations with her and

thereafter refused to marry her and left her. On report to the above effect being lodged by the prosecutrix, offence under the aforesaid section was registered against the applicant.

3. Learned counsel for the applicant submits that applicant is an innocent person and has been falsely implicated in this case. He also submits that the applicant and the prosecutrix were known to each other for the last one year, the prosecutrix is a major girl (divorcee) of 26 years, and that she was a consenting party. In these circumstances, *prima facie*, no offence can be made out against the applicant. He is in custody since 14.01.2021 and conclusion of the trial is likely to take some time. Therefore, he may be released on bail.
4. On the other hand, learned counsel for the State opposes the bail application.
5. Heard learned counsel for the parties and perused the case diary.
6. Considering the facts and circumstances of the case, the manner in which the incident is said to have taken place, the fact that the applicant and prosecutrix were known to each other for about a year prior to lodging of the FIR and there had been physical relations between them on number of occasions and that prosecutrix and applicant lived together for one month, *prima-facie* the age of the prosecutrix i.e. 26 years, the detention period of the applicant, who is 30 years old, and the fact that the applicant has no criminal antecedent and there is no likelihood of

the applicant tampering with the evidence or absconding as admitted by both the counsel and conclusion of trial may take some time, without expressing any opinion on the merits of the case, this Court is of the opinion that present is a fit case for grant of bail to the applicant. Accordingly, the application is allowed. It is directed that in the event of applicant executing a personal bond for a sum of **Rs.50,000/-** with two sureties of Rs.25,000/- each to the satisfaction of the concerned trial Court, he shall be released on bail on the following 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.
- (iv) he shall not involve himself in any offence of similar nature in future or else this order granting bail to the applicant shall automatically stand cancelled without further reference to this Court.

Sd/-
Gautam Chourdiya
Judge