

(Proceedings through video conferencing)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No.1321 of 2021

- Sameer Alam, S/o Mahsud Alam, aged about 20 years, R/o village Ramanujganj, Ward No.11, PS Ramanujganj, District Balrampur Ramanujganj (CG)

---- Applicant (In Jail)

Versus

- State of Chhattisgarh, through Station House Officer, Outpost Vijaynagar, Police Station- Ramanujganj, District- Balrampur Ramanujganj (CG).

....Non-applicant

For Applicant	:	Mr. S.R. Sinha, Advocate
For Respondent	:	Ms. Anjali Singh Chouhan, PL.

Hon'ble Mr. Justice Parth Prateem Sahu

Order On Board

12.7.2021

1. This is first application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to applicant, who is in custody since 6.12.2020 in connection with Crime No.256/2020 registered at Police Outpost- Vijaynagar, Police Station Ramanujganj, District Balrampur Ramanujganj (CG) for commission of offence punishable under Section 376 of the Indian Penal Code.
2. The prosecution story, in brief, is that present applicant, on the pretext of marriage, had established physical relationship with the prosecutrix on many occasions, lastly on 9.3.2020, and thereafter present applicant refused to marry her. Complaint to the police was made by Javed Alam, brother of prosecutrix, on 3.12.2020 based on which instant crime is registered

against present applicant.

3. Mr. S.R. Sinha, learned counsel for applicant submits that from the contents of FIR, statement of brother of prosecutrix recorded under Section 161 CrPC as also statement of prosecutrix recorded under Section 164 CrPC, it is apparent that the applicant and the prosecutrix were in love for last two & half years. The prosecutrix, who is a major girl, had developed physical relationship with present applicant as per her own free will. He further submits that only after applicant's refusal to marry the prosecutrix, as per allegations, the complaint was lodged against present applicant. He submits that from the contents of FIR, statement of brother of prosecutrix recorded under Section 161 CrPC and statement of prosecutrix recorded under Section 164 CrPC, it is evident that offence under Section 376 of IPC would not be made out against present applicant as prosecutrix had developed physical relationship with her own free will. Hence the applicant may be released on regular bail. In support of his contention, learned counsel places his reliance on decision of Hon'ble Supreme Court in case of **Pramod Suryabhan Pawar vs. State of Maharashtra** reported in **(2019) 9 SCC 608**.
4. Per contra, Mr. BP Banjare, learned State Counsel opposes the submissions made by learned counsel for applicant and submits that present applicant on the pretext of marriage had committed sexual intercourse with prosecutrix and when the prosecutrix asked him to marry her, he firstly notarized a document on stamp paper to the effect that he will marry her,

but subsequently he refused. Learned counsel read over statement of prosecutrix recorded under Section 161 of CrPC to argue that applicant had established physical relationship with the prosecutrix on the pretext of marrying her and submits that present applicant has deceived the prosecutrix by giving false assurance of marriage and committed sexual intercourse with her. Hence, the applicant is not entitled to be released on regular bail.

5. I have heard learned counsel for the parties.
6. As per contents of FIR, statement of brother of prosecutrix, and statement of prosecutrix recorded under Section 164 of CrPC, the prosecutrix was having love affair with present applicant and due to this reason, she had developed physical relationship with applicant.
7. Taking into consideration the allegations levelled in FIR, statement of brother of prosecutrix recorded under Section 161 CrPC and statement of prosecutrix recorded under Section 164 of CrPC, without commenting anything on merits of the case, I am inclined to allow this bail application.
8. Accordingly, the application is allowed and it is directed that applicant shall be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the trial Court concerned on the conditions that;
 - a) he shall appear before the trial Court concerned regularly on each & every date unless exempted from appearance.
 - b) he shall not, in any manner, tamper with the prosecution

witnesses.

- c) If applicant is found involved in similar offence in future, it will be open for the State to apply for cancellation of bail.

Certified copy as per rules.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-