

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 239 of 2021**

Shiv Kumar Sahu S/o Mohan Lal, Aged About 27 Years
Resident of Village Gidhouri, Chowki Gidhouri (Tundra),
District Baloda Bazar Bhatapara Chhattisgarh.

---- Applicant**Versus**

State of Chhattisgarh Through Station House Officer, Police
Station Gidhouri (Tundra), District Baloda Bazar Bhatapara
Chhattisgarh.

---- Non-applicant

For Applicant : Shri Satya Prakash Verma, Advocate
For Non-applicant/State : Shri B.P. Banjare, Dy. G.A.
For Objector : Shri Banhiman Roy, Advocate

(Proceedings through Video Conferencing)
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

26.07.2021

1. The applicant has preferred this first bail application under Section 438 of the Cr.P.C. for grant of anticipatory bail, as he is apprehending his arrest in connection with Crime No.168 of 2020, registered at Police Station Gidhouri (Tundra), Civil and Revenue District Baloda Bazar Bhatapara (C.G.), for offence punishable under Section 376 of Indian Penal Code.
2. Case of the prosecution in brief, is that, applicant met with complainant for the first time at Kargi Road Railway Station, thereafter, applicant asked for her mobile number and continuously, they were having talk on mobile. On 19.01.2020,

applicant came to Railway Station at Kargi Road, called her and thereafter asked her to go to Raipur. They have visited Raipur for whole day and take shelter in hotel at night. Applicant has made physical relationship with her in the hotel. On next day, on the pretext of marriage, they were going to Ajmer and boarded train. When train reached near Bilaspur, he gave a call to her brother Jai, upon which, his brother asked them to step down from the train at Amlai Railway Station and after marriage to proceed further. Complainant and applicant step out at Amlai Railway Station where mother and brother of applicant threatened her of life. Applicant and his brother brought the complainant at Bilaspur and after leaving her at Bilaspur Railway Station, went away. A written report was lodged by complainant before the office of Superintendent of Police, Bilaspur mentioning that applicant made physical relationship with her on the pretext of marriage. A complaint lodged before the office of Superintendent of Police was forwarded to concerned Police Station, based upon which, instant crime was registered against the present applicant.

3. Shri Satya Prakash Verma, learned counsel for the applicant submits that when the applicant proposed the complainant with regard to marriage, she did not intimate or brought to his notice about the fact that she was married with one Raja Sahu prior to giving proposal Raja Sahu, as such, she suppressed material fact. When this fact came to the knowledge of applicant that complainant was earlier married with one Raja Sahu, dispute between them taken place and further applicant could not legally

marry with complainant, hence refused to marry being a Government Servant. He referred to the document filed by him of Court proceeding between complainant and Raja Sahu in support of his contention. He further submits that applicant has not cheated the complainant in any manner, but it is the complainant who herself has not brought to the notice of the fact of her marriage, which on the date of lodging of case was subsisting with one Raja Sahu. He also submits that applicant is Government Servant and working in Indian Army, hence, he may be granted anticipatory bail.

4. Per contra, Shri B.P. Banjare, learned Deputy Government Advocate representing the State vehemently opposes the bail application and read over the statement of complainant recorded under Section 164 of the Cr.P.C. and argued that applicant under the false pretext of marriage, made physical relationship with complainant and thereafter left her, hence, present applicant is not entitled for grant of anticipatory bail.
5. Shri Banhimman Roy, learned counsel for the objector submits that on the date of incident, complainant was minor. He further submits that complainant had placed on record copy of birth certificate as well as Aadhaar Card to show that date of birth of complainant is 01.01.2004. He further submits that on the date of incident, complainant was minor, hence, present applicant is not entitled for anticipatory bail.
6. Upon putting specific query whether the copy of report made by complainant to Superintendent of Police, Bilaspur is available on

record with him, he submits that copy of complaint made by complainant on 24.02.2020 is available on record and based upon which, First Information Report was lodged against the present applicant.

7. I have heard learned counsel for the parties.
8. To appreciate the submission made by learned counsel for the objector, I have perused the copy of birth certificate as well as copy of Aadhaar Card placed on record, along with copy of Aadhaar Card placed by the applicant along with the copy of school register. Undisputedly, name of complainant in the complaint filed by her is mentioned as Gayatri Sahu. Aadhaar Card of Gayatri Sahu is placed on record along with covering memo by the applicant. Copy of school register is also placed on record showing the age of Gayatri Sahu to be 28.10.2000. This copy has been issued by Headmaster of Government Primary Girls School, Kota on 08.07.2021. the Aadhaar Card and birth certificate submitted by objector is in the name of Komal Sahu.
9. Taking into consideration the fact that name in the Aadhaar Card as well as birth certificate produced by learned counsel for the objector is shown differently than the name of the complainant recorded in the Police Department. Copy of Aadhaar Card in the name of Gayatri Sahu is also available on record as well as name of complainant mentioned in the proceeding under Section 13(1) of the Hindu Marriage Act, 1955, submission of learned counsel for the objector could not be accepted at this stage that it is Gayatri Sahu, who is named as Komal Sahu.

10. Perusal of additional documents placed on record along with covering memo would show that on the date of incident, complainant was a major girl. She has filed an application under Section 13(1) of the Hindu Marriage Act, 1955 on 06.01.2021, in which, it is mentioned that complainant married with one Raja Sahu resident of Kudhurtal, Ward No.10, Naharpara Lormi, Post Chandeli, Police Station Lalpur, District Mungeli on 17.04.2018. Certified copy of proceeding of Family Court, Bilaspur as well as application under Section 13(1) of Hindu Marriage Act, 1955 is placed on record in support of the contention that complainant was married in the year 2017 with one Raja Sahu.
11. Taking into consideration entire facts and circumstances of the case, nature of allegations, further that complainant in the written report has not mentioned that she intimated the fact of existing marriage on the date of incident or when applicant made proposal of marriage and applicant is Government Servant serving with Indian Army, without commenting anything into the merits of the case, I am inclined to release the present applicant on anticipatory bail.
12. Accordingly, bail application is allowed and it is directed that in the event of arrest of the applicant in connection with the aforesaid offence, he shall be released on anticipatory bail on his furnishing a personal bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with one surety in the like sum to the satisfaction of the arresting officer and he shall be abide by the following conditions :-

(i) he shall make himself available for interrogation by a police officer as and when required;

(ii) 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.

(iii) he shall not influence the witnesses during pendency of the trial.

Certified copy as per Rules.

Sd/-
(Parth Prateem Sahu)
Judge