

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 431 of 2021**

- Ritesh Kumar Singh, S/o Devendra Prasad Singh, aged about 44 Years, R/o Siyaram Nagar, R.B.S.S. Sahay Road, Behind of Blind School, Kotwali Bhagalpur (Bihar).

---Applicant

Versus

- State of Chhattisgarh, Through Station House Officer, Police Station Sarkanda, District Bilaspur, Chhattisgarh.

---Non-applicant

For Applicant	Ms. Gunjan Tiwari, Advocate.
For State	Mr. Anand Verma, Deputy G.A.
For Objector	Mr. V.K. Agrawal, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Order on Board****11/06/2021**

1. The matter is heard through Video Conferencing.
2. The applicant has preferred this first bail application under Section 438 of Cr.P.C. as he is apprehending his arrest in connection with Crime No. 217/2021 registered at Police Station Sarkanda, District Bilaspur, C.G. for the offence punishable under Sections 376 & 384 of Indian Penal Code.
3. Case of the prosecution, in brief, is that prosecutrix, aged about 38 years, lodged a complaint on 15th February, 2021 alleging in it that applicant continuously made sexual intercourse with her from 14.08.2012 to 14.12.2020 and both

were living as husband and wife. When she asked the applicant to marry, he refused to marry and left her. During this period, applicant also sold some ornaments of prosecutrix and thereafter she lodged the FIR against the applicant.

4. Learned counsel for the applicant submits that applicant is an innocent person and has been falsely implicated in this case. She submits that the prosecutrix is a married lady, aged about 38 years and from 2012 she was having physical relations with the applicant with her own consent. No report was lodged by the prosecutrix against the applicant from 2012 to 2020. She further submits that if the entire case is taken as it is, it seems that prosecutrix was a consenting party. Since, prosecutrix is a major lady and a consenting party, *prima-facie*, no case is made out against the present applicant and charge sheet has not yet been filed. The applicant is ready to abide by all such conditions as may be imposed by this Court while granting anticipatory bail.

Reliance has been placed on the decisions of the Hon'ble Supreme Court in ***Maheshwar Tigga vs. State of Jharkhand*** reported in ***(2020) 10 SCC 108*** & ***Bhadresh Bipinbhai Sheth vs. State of Gujarat and another*** reported in ***(2016) 1 SCC 152***.

5. Learned Counsel appearing for the State as well as the Objector oppose the bail application.

6. I have heard learned counsel for the parties.
7. It is a well settled principles of law that while considering the anticipatory bail application, the Courts have to strike a perfect balance between the two conflicting interests viz. sanctity of individual liberty and interest of society. Although the power to release on anticipatory bail can be described as of an extraordinary character but this would not justify the conclusion that the power must be exercised in exceptional cases only. Powers are discretionary to be exercised in the light of circumstances of each case. [*Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others*, (2011) 1 SCC 694]. There is no “inexorable rule” that anticipatory bail cannot be granted unless the applicant is the target of mala fides. There is no invariable or inflexible rule that the applicant has to make out a special case for grant of anticipatory bail. The Court must keep in mind that a person seeking relief of anticipatory bail continues to be a man presumed to be innocent. [*Sushila Aggarwal and others Vs. State (NCT of Delhi) and another*, (2020) 5 SCC 1]. As has been observed in the matter of **Bhadresh** (*supra*), the following factors and parameters need to be taken into consideration while dealing with anticipatory bail:
 - (a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
 - (b) The antecedents of the applicant including the fact as to

whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(c) The possibility of the applicant to flee from justice;

(d) The possibility of the accused's likelihood to repeat similar or other offences;

(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of [Sections 34](#) and [149](#) of the Penal Code, 1860 the court should consider with even greater care and caution, because overimplication in the cases is a matter of common knowledge and concern;

(h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

8. Thus, keeping in view the above principles of law as to the consideration of anticipatory bail, in the given facts and circumstances of the case, the manner in which the offence is alleged to have been committed, the inordinate delay of 8-9 years in lodging of FIR, the prosecutrix, aged about 38 years, and the applicant, aged about 44 years, are married persons,

the prosecutrix has two children, they were in relationship for the last 8-9 years, during this period they visited several places together, were living as husband and wife, had physical relations with each other, no complaint or report was made to anyone during this period, the applicant has no criminal antecedents, though the matter is under investigation, however, no apprehension is shown by the State counsel of his absconding or tampering with or influencing the witnesses, no custodial interrogation of the applicant is required, without commenting anything on merits of the case, this Court is of the opinion that present is a fit case for granting anticipatory bail to the applicant. Accordingly, the application is allowed.

9. It is directed that in the event of arrest of the applicant in connection with the aforesaid crime, he shall be released on bail by the Arresting Officer on his furnishing a personal bond for a sum of Rs.50,000/- with two sureties of Rs.25,000/- each to the satisfaction of the Arresting Officer. Applicant shall be released on bail on the following conditions:-

- (i) he shall make himself available for interrogation before the Police 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 fact to the Court or to the Investigating Officer,
- (iii) he shall not act in any manner which will be prejudicial to fair and expeditious trial, and

- (iv) he shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.
- (v) he shall strictly follow the COVID-19 protocol issued by the Central Government / State Government / Local Authority.
- (vi) he shall not involve himself in any offence of similar nature in future.

Let a copy of this order be forwarded to the concerned police station forthwith who shall inform the trial Court in the event of applicant involving himself in similar offence in future.

Sd/-
Gautam Chourdiya
Judge

Akhilesh