

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.Cr.C.(A) No. 489 of 2021

1. Gorakhnath Singh Chouhan, aged about 63 years, Son of late Kishan Singh Chouhan,
2. Smt. Sunanda Chouhan, aged about 61 years, wife of Shri Gorakhnath Chouhan,
Both R/o. 565 Court Gali, Near Pakshala, Nevasa, Ahmad Nagar (Maharashtra)
3. Kanwaljeet Chouhan, aged about 34 years, Son of Gorakhnath Chouhan, R/o. 202, Galaxy Apartment, Near Saket Colony, Amrawati (Maharashtra),
4. Smt. Priyadarshani Pardeshi, aged about 36 years, Wife of Madan Singh, R/o. Taket Bujrug, Nasik (Maharashtra)

---- Applicants

Versus

- State of Chhattisgarh, Through : Station House Officer, Police Station Mahila Thana Raipur, District Raipur (C.G.)

---- State/Non-Applicant

For Applicants	:	Shri Harshwardhan Parganiha, Advocate
For Non-Applicant/State	:	Shri Ayaz Naved, Government Advocate

Hon'ble Shri Justice Gautam Chourdiya, J
Order on Board

16.06.2021

1. The application is heard through Video Conferencing.
2. The applicants have preferred this first bail application under Section 438 of Cr.P.C. as they apprehend their arrest in connection with Crime No. 23/2021, registered at Police Station Mahila Thana Raipur, District Raipur (C.G.) for offences punishable under Sections 498-A & 506 read with Section 34 of IPC.
3. As per case of prosecution, the present applicant No.3 is husband, applicants No. 1 & 2 are father-in-law & mother-in-law and applicant No.4 sister-in-law of complainant Surabhi Singh. Applicants No. 1 & 2 reside separately at Nevasa, Ahmad Nagar (Maharashtra) and applicant No. 4 also resides separately at Nasik (Maharashtra). On 29.11.2019, the applicant No.3 and the complainant got married as per Hindu Custom at Raipur. On 07.12.2020 at Mahila Thana Raipur, a complaint was lodged by the

complainant against the applicants, upon which crime No.23/2021 under Section 498-A and 506/34 IPC was registered against the applicants for the reason that after the marriage, the amount of dowry as demanded by applicants No. 1 & 2 was not being given by the complainant's family and that she was physically assaulted and mentally harassed by applicant No.3 who is husband. It is also alleged that the husband used to allegedly does unnatural acts with her while she was residing with him.

4. Learned counsel for the applicants submits that the applicants are innocent persons and have been falsely implicated in this case. He submits that there are no specific allegations made against the applicants, the applicants No. 1, 2 & 4 reside separately, there is no likelihood of the applicants tampering with the prosecution evidence or absconding and due to covid-19 situation the trial of the case is likely to take some time for its final disposal. Therefore, the applicants be released on anticipatory bail by this Court. Reliance has been placed on the decisions of the Hon'ble Supreme Court in ***Bhadresh Bipinbhai Sheth vs. State of Gujarat and another*** reported in ***(2016) 1 SCC 152***.
5. On the other hand, learned counsel for the State opposes 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. Having heard learned counsel for the parties, having regard to the facts and circumstances of the case, keeping in view the above principles of law as to the consideration of anticipatory bail and the fact that the matrimonial dispute between the complainant & her husband (applicant No. 3), the husband (applicant No.3) filed an application under Section 9 of Hindu Marriage Act for restitution of conjugal rights before the Family Court, Amravati on 05.12.2020 and the offence registered under Sections 498-A & 506/34 of IPC against all the applicants, applicants No. 1 & 2 are aged about 63 & 61 years old who reside separately, applicant No. 4 also resides separately in Nasik (MH), F.I.R. lodged on 22.02.2021 in Police Station Mahila Thana Raipur, District Raipur, that the applicants have no criminal antecedents, there is no likelihood of the applicants tampering with the prosecution evidence or absconding, no custodial interrogation of the applicants is required as admitted by both the counsel and looking to the Covid-19 situation, conclusion of the trial may take some time, without commenting anything on merits of the case, I am inclined to release them on anticipatory bail.

9. Accordingly, the bail application is allowed and it is directed that in the event of arrest of the applicants in connection with the aforesaid crime, they shall be released on anticipatory bail on each of them furnishing a personal bond in the sum of Rs.50,000/- with two sureties of Rs.25,000/- each to the satisfaction of the Arresting Officer subject to the following terms and conditions:-

- they 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/her from disclosing such fact to the Court or to the Investigating Officer.
- they shall not act in any manner which will be prejudicial to fair investigation and expeditious trial, and
- they shall make themselves available for interrogation by a police officer as and when required.
- they shall strictly follow the COVID-19 protocol issued by the Central Government/State Government/Local Authority.

Sd/-

(Gautam Chourdiya)
Judge

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