

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MCRCA No. 631 of 2021**

- Vaasu Sharma, S/o Shri Avinash Sharma, aged about 21 years, R/o near Agrasen Bhawan, Station Road, Naila Chowki, Naila, Thana Janjgir District Janjgir-Champa Chhattisgarh.

-----Applicant**VERSUS**

- State of Chhattisgarh through: District Magistrate, Janjgir-Champa, Distt. Janjgir-Champa Chhattisgarh.

-----Non-applicant

For Applicant	: Ms. Naushina Ali, Advocate
For Non-applicant- State	: Mr. Sudheer Sahu, Panel Lawyer
For Objector	: Mr. Sanjay Agrawal, Advocate

Hon'ble Shri Parth Prateem Sahu, Judge***(proceedings through video conferencing)*****ORDER****27/07/2021**

1. Applicant has preferred this application under Section 438 of CrPC for grant of anticipatory bail as he apprehends his arrest in connection with Crime No.144/2021 registered at Police Station Janjgir, District Janjgir-Champa, (C.G.) for the offence punishable under Section 376 of IPC.
2. Case of the prosecution is that, based on the written report dated 20.03.2021 by prosecutrix mentioning therein that the applicant and the prosecutrix were having friendship. Applicant on 02.02.2021 asked the prosecutrix to meet him near Kachhari chowk, Janjgir. When she reached at the said place, given call to applicant, he informed that he is in hotel Silver Oak, Janjgir along with his relatives and on the pretext of meeting her with his relatives he asked her to come at hotel. When she reached at the hotel, she was taken to Room no. 102 and when prosecutrix asked

him about his relatives, he stated that they are at restaurant taking meal. They started talking and taking photographs. After sometime, applicant tried to remove her cloth upon which she objected, on which, applicant said that he will marry her, his family members are ready and there is nothing wrong in it, he will definitely marry her and when applicant did not accept the words of prosecutrix, she tried to escape. Applicant caught hold the prosecutrix and committed sexual intercourse. After the incident, she was threatened by the applicant not to open her mouth about the incident, stated that he has made a video clip which he will publish it on social media. It is also alleged that when the prosecutrix informed her parents that she wanted to marry with applicant, parents of prosecutrix called him on phone and met him at the place on which they were called the applicant, stated that he will not marry for further five years. They also visited the parents of applicant but they also refused.

3. Ms. Naushina Ali, learned counsel for the applicant submits that the allegation levelled against the present applicant is false and frivolous. She submits that the complainant and the present applicant were in love affair. In support of her contentions she referred to mobile chat filed along with application. She argued that the applicant and the complainant are major and the physical relationship was consensual between both of them. She further submitted that there is delay in lodging F.I.R. As per allegation, the incident is of 02.02.2021 whereas the complaint was lodged only on 20.03.2021. MLC report does not support the case of prosecutrix. No injury either internal or external was found by the doctor and the doctor has opined that no opinion can be given of recent intercourse with complainant. She also argued that the police under the pressure of parents of complainant were

harassing the family members of applicant which made them to approach this Court by filing writ petition bearing no. WPC 2249/2021 wherein a direction was issued to the respondents-authority not to abuse or harass the petitioners therein on the ground of registration of some criminal case against the son of petitioner no. 1 and further issued direction to the Director General of Police to ensure that the petitioners be not abused or harassed or subjected to physical torture. Relying upon the judgment passed by Hon'ble Supreme Court in case of ***Pramod Suryabhan Pawar v. State of Maharashtra and another*** reported in **(2019) 9 SCC 608**, she would argue that refusal to marry in itself will not constitute an offence under Section 376 of IPC and submits that the applicant may be enlarged on bail.

4. Mr. Sudhir Sahu, learned State counsel opposes the submissions made by learned counsel for the applicant. He read over the contents of F.I.R. and stated that the applicant not only committed forceful intercourse with prosecutrix on the pretext of marriage but also threatened her that he has made video clip and will make it viral on social media if she informs the incident to anyone. He also read over the statement of prosecutrix, her parents and also one of the employees of hotel Silver Oak. He submits that the allegation of calling the complainant at hotel Silver Oak by the applicant is prima facie proved by the employee/ receptionist of the said hotel, hence, applicant is not entitled for grant of bail.
5. Mr. Sanjay Agrawal, learned counsel along with complaint in person is present through virtual mode. Learned counsel submits that though the complainant was having friendship with the applicant but the applicant called her on false pretext of meeting her to his family members whereas no family members were

present at the aforementioned hotel. He forcefully committed intercourse with her stating that he will marry her. When parents of complainant visited him and his family members, they refused to marry, hence, thereafter only, complaint was lodged. There is no delay in filing the report. He also submits that after lodging complaint, elder brother of applicant sent obscene messages and pictures to complainant on her social media account showing picture of his private part and abusing her. He submits that he has filed the print out of photographs and messages of mobile chat. Separate F.I.R. is registered against him. Complainant is being threatened continuously and recently on the ground that she may not raise any objection before this Court.

6. I have heard learned counsel for the respective parties and also perused the case diary.
7. As per the allegations, in the F.I.R., prosecutrix has mentioned that they were having relationship as friends, they have met for the first time in December 2020. There is specific allegation that the prosecutrix was called by the applicant at hotel Silver Oak, Janjgir stating her that his parents are present there and he will introduce prosecutrix with them; he made forceful intercourse stating that he will marry her and further given threat that video clip of incident has been made and he will make it viral if she discloses the incident to anyone. When the parents of complainant visited the applicant and his parents, applicant refused to marry her stating that they will not marry for further five years. Booking of room at aforementioned hotel on the date of incident by applicant and visiting of one girl is prima facie established in the statement of receptionist of the said hotel by name Dhaneshwari. The case law relied upon by the learned counsel for the applicant in case of

Pramod Suryabhan Pawar (supra) is not applicable to the facts of present case. In that case, complainant and the person against whom allegations are made were Government servants. They were indulged in making physical relationship for long time and the complainant visited the house of person against whom allegations were made and on each visit she resided in his house for 4-5 days, hence, the facts of judgment relied upon by learned counsel for the applicant will not be applicable to the present case.

8. Taking into consideration, the nature of allegations, material collected by the police and available in the case diary, facts and circumstances of the case, I do not find it a fit case to enlarge the applicant on anticipatory bail.
9. Accordingly, application is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge