

(Proceedings through Video Conferencing)

HIGH COURT OF CHHATTISGARH, BILASPUR
Order Sheet

MCRCA No. 687 of 2021

Rajat Pashine **Versus** State of Chhattisgarh

23.07.2021	Shri Hari Agrawal, Advocate for the applicant. Shri Vimlesh Bajpai, Government Advocate for the State. Shri Ashish Surana, Advocate for the Objector. Shri Hari Agrawal, learned counsel for the applicant submits that he has moved an application for amendment in the cause-title of memo of application, paragraph-3, ground No.6(c) and also in synopsis for adding Section 377 of Indian Penal Code, 1860 (henceforth 'IPC') and Section 4 of Dowry Prohibition Act, 1961 (henceforth 'Act of 1961') along with Section 498-A read with Section 34 of the IPC. He further submits that in the impugned order, only offence under Section 498-A read with Section 34 of the IPC is mentioned, hence, in the application also, same offence has been mentioned. It is contended that during the course of hearing, learned counsel for the objector referred to the document i.e. the objection filed by the Station House Officer, Mahila Police Station, Durg, when it come to his knowledge that offence under Section 377 of the IPC and Section 4 of the Act of 1961 is also registered against the present applicant, hence, he may be permitted to amend the bail application and make necessary corrections. Shri Ashish Surana, learned counsel for the objector submits that copy of amendment application has not been forwarded to him. He further submits

that learned counsel for the applicant may be directed to send the copy of amendment application through e-mail.

Shri Agrawal, learned counsel for the applicant undertakes that he will forward the copy of amendment application today itself to learned counsel for the objector.

Heard learned counsel for the parties on application for amendment.

Taking into consideration the reasons assigned in the application, the same is allowed.

Learned counsel for the applicant is permitted to amend the application and make necessary corrections in bail application today itself.

At this stage, Shri Surana, learned counsel for the objector submits that the bail application in its form is not maintainable before this Court. He submits that the applicant has not moved an application for grant of anticipatory bail before the Court of Sessions for offence under Section 377 of the IPC and Section 4 of the Act of 1961. He further submits that as per verdict passed by Division Bench of this Court in **MCRCA No.234 of 2020** (*Hare Ram Sharma v. State of Chhattisgarh*) passed on **18.11.2020**, applicant apprehending his arrest has to first approach the Court of Sessions for grant of anticipatory bail, hence, this bail application is not maintainable. The learned counsel further submits that Hon'ble Supreme Court in case of **Hamida v. Rashid alias Rasheed and Others** reported in **(2008) 1 SCC 474** considering the fact that whether the applicant who was enlarged on bail for some offences and thereafter, there is addition of some major offence, said

applicant can continue on bail by virtue of earlier bail order wherein Hon'ble Supreme Court has held that when the offence of major offence is added, applicant has to apply for a fresh bail before the concerned Court as the Court granting bail has not considered the merits of the case based on the offences added subsequently. It is contended that as the applicant herein has moved an application for offence under Section 498-A read with Section 34 of the IPC only, bail application before the Court could not be heard for offence under Section 377 of the IPC and Section 4 of the Act of 1961 as the same was not under consideration before the Court below.

Shri Agrawal, learned counsel for the applicant submits that it is the case of prosecution and objector itself that initially offence against present applicant was registered under Section 498-A read with Section 34 of the IPC, Section 377 of the IPC and Section 4 of the Act of 1961 have been added subsequently, hence, applicant has moved an application under Section 438 of the Cr.P.C. for grant of anticipatory bail for offences registered against him as per his knowledge under Section 498-A read with Section 34 of the IPC. He submits that Station House Officer has filed an objection on 06.04.2021 in bail application before learned Sessions Court mentioning that offence under Section 377 of the IPC and Section 4 of the Act of 1961 is also added against the present applicant. The bail application came up for hearing before the Court of Sessions on 09.04.2021 i.e. after filing of the objection by the Station House Officer. Along with objection, case diary was also submitted by the Station House Officer. Though the applicant could not mention the specific provisions of Section 377 of the IPC and Section 4 of the Act of 1961 in the application, but the Court below while considering the application for grant of

bail has been brought to the notice with regard to offences registered against the present applicant. He submits that in view of specific objection filed before the Court below on 06.04.2021 and placed along with case diary, there was material before the Sessions Court with regard to nature of offences registered against the present applicant while considering the bail application. It cannot be said that applicant is directly approaching this Court for grant of anticipatory bail for the offences under Section 377 of the IPC and Section 4 of the Act of 1961. It is further contended that once there is material for consideration before the Court below considering the bail application then merely non-mentioning of offences under some sections in the bail application itself will not technically come in the way of the applicant to file an application before this Court, challenging the order of rejection of anticipatory bail application of learned Sessions Court.

Shri Agrawal, learned counsel for the applicant submits that in case of **Hamida** (supra) while granting bail to the accused under Section 438 of the Cr.P.C., learned Court while granting bail clearly mentioned in its order that the bail order is with respect to the offence under Sections 324, 352 and 506 of the IPC only and if some grievous offence is registered against the applicant, then he will not get any benefit of the order of bail granted to him.

I have heard learned counsel for the respective parties on the objection with regard to the maintainability of the bail application.

There is no dispute that the applicant moved an application before the Court of Sessions for grant of anticipatory bail for the offences said to be registered against him under Section 498-A read with Section 34 of the IPC,

but from perusal of the documents enclosed along with the application by the complainant through her Advocate, specifically the objection filed by Station House Officer, Mahila Police Station, Durg on 06.04.2021 wherein while opposing the application for grant of bail to the present applicant, they have very specifically raised an objection that subsequently offence under Section 377 of the IPC and Section 4 of the Act of 1961 is added separately. This objection as appearing mentions that along with the objection, case diary of crime concerned is also enclosed. The judgment relied upon by the learned counsel for the objector in **MCRCA No.234 of 2020** (*Hare Ram Sharma v. State of Chhattisgarh*) do not apply to the facts of the case as Hon'ble Division Bench of this Court considered whether applicant can file an application for grant of anticipatory bail directly to the High Court without approaching to the Court of Sessions and held that except in exceptional circumstances, applicant has to approach the Court of Sessions for filing of bail application. In the case at hand, facts are different as the applicant has approached the Court of Sessions by filing an application under Section 438 of the Cr.P.C. and before the Court below itself, there is material and objection filed by the Station House Officer of concerned Police Station that offence under Section 377 of the IPC and Section 4 of the Act of 1961 is also added subsequently.

The other judgment relied upon by the learned counsel for the objector in case of **Hamida** (supra) is also on different footing. In case of **Hamida** (supra), applicant was enlarged on bail by the Court below considering the offence under Sections 324, 352 and 506 of the IPC, but subsequently, offence under Section 304 of the IPC is added and in that case, Hon'ble Supreme Court has held that when the offence of grave nature is added

subsequently, then the applicant who is enlarged on bail considering the offences of minor nature, then he has to apply for a fresh bail.

Considering the totality of the facts and circumstances of the case that on the date of hearing of bail application by the Court of Sessions on 09.04.2021 by way of objection, there was a material before it with regard to registration of the offence under Section 377 of the IPC and Section 4 of the Act of 1961 against the present applicant, which was placed along with the case diary, I am of the view that the bail application is maintainable.

The bail application is heard finally, order passed separately, signed and dated.

Sd/-
(Parth Prateem Sahu)
Judge