

(Proceedings through video conferencing)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No.744 of 2021

- Mohammed Imran, S/o Mohd. Farukh, aged about 35 years, R/o Subhash Chowk, Keshkal, District Kondagaon (CG)

---- Applicant

Versus

- State of Chhattisgarh Through Station House Officer, Police Station Keshkal, District Kondagaon (CG)

---- Non-applicant

For Applicant	:	Mr. Akhtar Hussain, Advocate
For Non-applicant	:	Mr. Roshan Dubey, Panel Lawyer
For Objector	:	Mr. Faiz Kazi, Advocate

Hon'ble Mr. Justice Parth Prateem Sahu
Order On Board

26/7/2021

1. This is an application under Section 438 of CrPC for grant of anticipatory bail to the applicant as he apprehends his arrest in connection with Crime No.110/2020 registered at Police Station Keshkal, District Kondagaon (CG) for commission of offence punishable under Sections 498, 34 of the Indian Penal Code and Section 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 (for brevity 'the Act of 2019').
2. Case of the prosecution, in brief, is that the complainant was married to present applicant on 27.5.2008 and after marriage, she started residing in her matrimonial home. On 5.9.2020 present applicant took the children from parents' house of complainant saying that he is taking children for wandering and will come after some time. However, when present applicant did not return after sufficient long time, the complainant made a phone call to him and then applicant informed her that he is going to Keshkaal for giving divorce to her. Complainant along with her family members visited Keshkaal on 01.10.2020 and submitted an application before

the Community (Jamat), thereafter present applicant pronounced *talaq* to her by saying 'talaq' three times. Family members of the complainant made their best efforts for compromise but present applicant and his family members have not paid any heed, therefore, complaint is lodged on 8.11.2020 based upon which instant crime is registered against present applicant and his family members.

3. Mr. Akhtar Hussain, learned counsel for applicant submits that false allegation of harassment has been levelled by the complainant after 12 years of marriage. He submits that the complainant has levelled similar allegations against other co-accused persons also and out of five co-accused persons, three have been granted anticipatory bail by Co-ordinate Bench in M.Cr.C. (A) No.1810/2020 vide order dated 19.2.201. Hence, present applicant is also entitled for grant of anticipatory bail on the ground of parity.
4. Mr. Roshan Dubey, learned Panel Lawyer for the State opposes the submissions made by learned counsel for applicant, in support of his submissions learned State Counsel read over contents of FIR and submits that as there is specific allegation of pronouncement of *talaq* against present applicant, he is not entitled for grant of anticipatory bail.
5. Mr. Faiz Qazi, learned counsel appearing on behalf of complainant / objector would submit that complainant is having only her brother at her parental home. He submits that Sections 3 & 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 have been brought into force with a purpose to protect Muslim women from the arbitrary and illegal pronouncement of *talaq*. The offence committed by present applicant of pronouncing *talaq* to the complainant-wife is punishable with imprisonment which may extend to three years. He further submits that so far as the order passed in M.Cr.C. (A) No.1810/2020, reliance on which is placed by applicant, is concerned, in that order itself the Co-ordinate

Bench has carved out distinction between the case of applicants therein and present applicant. He submits that there is no chance of compromise between the parties.

6. At this stage, Mr. Akhtar Hussain, learned counsel for applicant would submit that though specific allegation is levelled against present applicant that he has given divorce to the complainant by pronouncing *talaq* three times, but as per provisions of the Act of 2019, the offence committed under the Act of 2019 have been made compoundable at the instance of Muslim married woman. Applicant is making all attempts to enter into compromise with complainant, therefore, in order to save married life and to protect interest of children born from the wedlock of present applicant and complainant, present applicant may be enlarged on anticipatory bail.
7. I have heard learned counsel for the parties.
8. Admittedly, the complaint is filed after 12 years of marriage levelling allegations of harassment and ill-treatment on the ground of bringing inadequate dowry in marriage and pronouncement of *talaq* by present applicant. It is true that case of present applicant stands on different footing from that of co-accused persons who have been granted anticipatory bail by the Co-ordinate Bench in M.Cr.C. (A) No.1810/2020 vide order dated 19.2.2020, but considering the provisions of Section 7 of the Act of 2019 under which offence is made compoundable at the instance of a married Muslim woman; the submission made by learned counsel for applicant that there is hope and chance of compromise between the parties; and keeping in mind the interest of complainant, I am of the view that present is a fit case where applicant should be released on anticipatory bail.
9. Accordingly, the application is allowed and it is directed that in the event of arrest of applicant in connection with the crime in question, he shall be released on anticipatory bail by the officer arresting him on his executing a personal bond in the

sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the Arresting Officer. The applicant shall also abide by the following conditions:

- (i) that he shall make himself available for interrogation before the Investigating Officer as and when required;
- (ii) that 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 / her from disclosing such facts to the Court or to any police officer;
- (iii) that he shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that he shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

Sd/-

(Parth Prateem Sahu)
Judge

roshan/-