

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 837 of 2021

- Kishore Nag Alias Parmanand Dhangar S/o Shri Chamru Ram Aged About 37 Years At Pattharri, Police Station And District Kanker Chhattisgarh

(Applicant counsel mentioned in Cause-title of bail application "Applicant's original name is Parmanand Dhangar but FIR Reg. mentions Kishore Nag")

---- Applicant

Versus

- State Of Chhattisgarh Through SHO Police Station Narayanpur, District Narayanpur Chhattisgarh

---- Respondent

For Applicant	: Shri Lukesh Kumar Mishra, Advocate
For Respondent/State	: Shri BL Sahu, Panel Lawyer

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board
(Proceeding through Video Conferencing)

30.07.2021

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. 57 of 2021 registered at Police Station Narayanpur, District-Narayanpur Chhattisgarh for commission of offense punishable under Section 376 and 417 IPC.
2. Case of the prosecution, in brief, is that, prosecutrix lodged a written complaint on 08.05.2021 mentioning there that she is a widow, having two children, her husband died on 12.04.2019. Applicant started visiting her house and stated that he likes her and wanted to marry her. He committed sexual intercourse on 30.06.2019 for the first time, thereafter, on several occasions continuously, he made physical relationship with her till February, 2021. Due to physical relationship between them, she also became pregnant in the month of November. Applicant took her to hospital and aborted her pregnancy. Thereafter, also applicant committed sexual intercourse with her and refused to

marry her. Based on written complain, instant crime has been registered against the applicant.

3. Applicant, apprehending his arrest, filed this anticipatory bail application after rejection of his application by the Court below.

4. Shri Lukesh Kumar Mishra, learned counsel for the applicant submits that complainant is major, aged about 30 years old. As per allegation in FIR, she is having two children and residing with her in-laws in her house. Being a widow lady, she is able to understand the *pros and cons* of physical relationship. She with her own will and wish, indulged in the act of making physical relationship with applicant. He submits that as per the allegation, applicant and complainant were in relationship since 2019 till February, 2021. He further submits that applicant has not made any statement or gave any assurance of marrying complainant. He submits that looking to long cohabitation of applicant and complainant, even if applicant refuses to marry her, as alleged, it will not come under Section 376 of IPC. In support of his argument, learned counsel places reliance case of **Uday Kumar Vs State of Karnataka**, AIR 2003 SC 13 and recent case of **Sonu @ Subhash Vs State of UP** (CRA-233 of 2021) decided on 01.03.2021. Hence, applicant may be enlarged on anticipatory bail under Section 438 of CrPC.

5. On the other hand, Shri BL Sahu, learned counsel for the State opposing the submissions of learned counsel for the applicant, submits that in FIR filed by the complainant, she made very specific allegation that applicant has made physical relationship with complainant on the

pretext of marriage. Similar statement has been made by prosecutrix in her statement recorded under Section 164 of IPC also. He submits that applicant has made physical relationship by giving false assurance of marrying her, hence he is not entitled for benefit under Section 438 of CrPC.

6. I have heard learned counsel for the parties.

7. Taking into consideration nature of allegations levelled against the applicant, the fact that complainant is widow, aged about 30 years and residing along with her in-laws, allegation of making physical relationship since 2019 to February, 2021, without commenting anything on merits of case, I am inclined to grant anticipatory bail to the applicant.

8. 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/- (Rupees twenty-five thousand) with one surety in the like sum to the satisfaction of the concerned Arresting Officer. The applicant shall also abide by the following conditions:

- a) That the applicant shall make himself available for interrogation before the Investigating Officer as and when required;
- b) That the applicant 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;

c) That the applicant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and

d) That the applicant shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

Certified copy as per rules.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma