

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MCRCA No. 827 of 2021**

- Ritesh Shah, S/o late Ramnik Shah, aged about 41 years, R/o 222, Kusum Villa, Telibandha, P.S. Telibandha, Raipur Chhattisgarh

-----Applicant**VERSUS**

- State of Chhattisgarh through: Police Station Telibandha, District Raipur, Chhattisgarh

-----Non-applicant

For Applicant	: Mr. Prafull N. Bharat, Sr.Adv. with Mr. Kashif Shakil, Advocate
For Non-applicant- State	: Mr. Shrikant Kaushik, P.L.
For Objector	: Mr. Sandeep Shrivastava, Adv.

*(proceedings through video conferencing)***Hon'ble Shri Parth Prateem Sahu, Judge****ORDER****04/08/2021**

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. 207/2021 registered at Police Station Telibandha, Raipur District Raipur (C.G.) for the offence punishable under Sections 376, 376(2)(N) & 377 of IPC.
2. As per the case of prosecution, in brief– complainant has lodged a written complaint before the SHO, police station Kanker on 09.06.2021 levelling allegations against the present applicant of making physical relationship with her without her consent initially in the month of January 2015. After commission of act, applicant stated her that do not disclose the incident to anyone else, he would perform marriage with her in that year itself. Applicant introduced the complainant with his mother showing his intention of marrying the

complainant. Thereafter, applicant on the pretext of marriage again made forceful physical relationship with her, this was intimated to mother of applicant. Mother of applicant suffered with cancer disease, therefore, marriage could not be performed. Complainant got the government job and she was posted at Kanker. She shifted to Kanker from Raipur upon her posting where also the applicant came there on number of occasions in her rental house and made physical relationship with her. Applicant took her to Visakhapatnam in the month of December 2017 and stayed in a hotel for couple of days and in May 2018 to Kanha forest, stayed in the hotel for couple of days and there also he made physical relationship with her on the pretext of marriage. But whenever she talks about their marriage, applicant for one or other reason avoided it. Applicant continuously made physical relationship with her for five years on the ground that he would marry her. Later on, he refused to marry with complainant. Relationship of complainant and the applicant was also known to her friends as well. When on 14.05.2021, complainant went to the house of applicant and stated that he made physical relationship with her on the false pretext of marriage and now he is refusing to marry her. Upon calling by applicant, one girl Seema Sahu along with Manoj Sahu also came there and they have threatened the complainant of life and also abused her. The applicant on the pretext of marriage has committed sexual intercourse with her since January 2015 to May 2020 against her will. Based on the complaint, instant crime was registered against the present applicant for the aforementioned offence.

3. Mr. Praful N. Bharat, learned senior counsel for the applicant would submit that the applicant has met with the complainant in the year 2012 while he was working in contract in one of the Government

departments where the applicant has to visit on account of his business dealing. At one point of time, in the year 2013, applicant met with complainant and proposed the complainant for marriage to which she refused on the ground that she wanted to marry some other person and thereafter the matter ended at that time. He further submits that thereafter in the year 2015-16, applicant again came in contact with complainant though he wanted to marry her initially but looking to her behavior and conduct as reflecting in the mobile chats filed along with application, applicant has changed his mind. He referred to some of the copies of mobile chats placed on record to argue that the complainant was not intended to stay in a joint family with his mother and brother. Applicant is alone to take care to his mother who is suffering from cancer and a brother who is not well settled in his life. He also referred to the chats placed along with covering memo to argue that the complainant after sometime of relationship started harassing and abusing not only the applicant but also the family members, hence in view of the conduct and act of the complainant it was not possible for the applicant to marry her. He also argued that the complainant herself had sent photographs of some of girls mentioning therein that he could marry with any of them which shows that the complainant herself was not interested to marry with applicant. Earlier also the complainant developed physical relationship with one boy by name Bhupendra Thakur as she was in the love affair with that boy. Against Bhupendra Thakur also similar allegations were levelled of making forceful physical relationship against her will on the pretext of marriage. In support of this contention, he places reliance upon document Annexure A-2 and Annexure A-3 which are the copies of F.I.R. bearing crime no. 34/2014 and the copy of evidence of complainant recorded in that

crime before the Trial Court on 29.01.2015. He also submitted that in that case, Bhupendra Thakur was acquitted from the charges levelled against him.

4. The complainant has already faced the similar situation as alleged against the applicant in the year 2014 itself. She was well aware of the circumstances of making physical relationship on the pretext of marriage, hence, the allegations that the applicant has made forceful relationship with her on the pretext of marriage is suspicious. Complainant, with her own will, has developed relationship with the applicant. As per allegation she continuously made physical relationship from 2015 to 2019. She has not made any complaint against the present applicant of making forceful intercourse with her but visited several places along with applicant on different point of time and intervals. The physical relationship was consensual. He submits that on account of subsequent development in their relationship as appearing from the mobile chats, particularly, the act and behavior of complainant, it was not possible for the applicant to marry her and make her life partner. He also submits that the complainant is represented through a counsel in these proceedings but has not refuted the mobile chat placed on record. In support of his contentions, he places reliance upon the judgments of Hon'ble Supreme Court in case of **Maheshwar Tigga v. State of Jharkhand** reported in **(2020) 10 SCC 108**.
5. Mr. Shrikant Kaushik, learned State counsel opposing the submissions made by learned counsel for the applicant submits that the applicant on false pretext of marriage has developed relationship and continuously made physical relationship with her. He read-over the contents of F.I.R. and submits that the applicant since beginning

avoided the marriage for one or the other reasons stating that they will marry. Time and again new dates have been given. He also pointed out that as per the contents of F.I.R., applicant took the complainant to his mother, introduced her impressing his desire of marrying her, upon which, mother of applicant was also agreed. There are specific allegations against the present applicant of commission of crime as alleged against him.

6. Mr. Sandeep Shrivastava, learned counsel for objector vehemently opposes the submissions of learned counsel for the applicants. He submits that in the F.I.R., there is specific mention that after break up with earlier Bhupendra Thakur, applicant taking an opportunity has come closer to her. Complainant started working in an advertisement agency of applicant at Raipur and when once she went to office of applicant in January 2015 which is in his house where applicant committed forceful intercourse with her. He submits that thereafter the applicant had given assurance that he will marry her. Applicant continuously made physical relationship with her on the pretext of marriage. Applicant deceived the complainant, later on, he directly refused to marry with complainant. He also referred to some of the chats placed by her on record stating to be of the year 2014 to argue that the applicant had presurried her to enter into compromise with Bhupendra against whom she has lodged complaint for commission of crime under Section 376 IPC. He further pointed out that the applicant himself in mobile chat has sent message that to compromise and not to marry with Bhupendra. He also read-over some of the mobile chats filed along with the objection and covering memo to argue that the mobile chat itself shows that the complainant and the applicant were in relationship and the applicant on the false pretext of marriage has developed physical relationship with

complainant. He submits that the physical relationship initially in the month January 2015 was a forceful intercourse with the complainant. Applicant from the beginning did not want to marry with complainant but only to exploit her sexually. There was no intention of applicant to marry her and she was misled. The subsequent act of complainant of making physical relationship was under misconception and it cannot be accepted as a willful consent of complainant. With respect to mobile chat referred by the learned counsel for the applicant, he submits that some of the chats made by complainant were on provocation of applicant. He places his reliance on the judgment of Supreme Court in case of **Yedla Srinivasa Rao v. State of A.P.** reported in (2006) 11 SCC 615; 2006 CrLR SC 784, **Anurag Soni v. State of Chhattisgarh** reported in (2019) 13 SCC 1; 2019 CrLR SC 620, **Nathu Singh v. State of Uttar Pradesh and others** decided in CRA 522/2021 on 28.05.2021 and **State of U.P v. Naushad** decided in CRA 1949/2013 on 19.11.2013. Learned counsel further submits that the report lodged by the applicant making allegation against the complainants was also after filing of the report against him. He submits that whitener is being used on the date mentioned earlier and subsequently it has been changed to some other date showing that the complaint was being lodged prior. Applicant is an influential person and having contact with police department, therefore he succeeded to mention the earlier date in his application.

At this stage, Mr. P.N. Bharat, learned counsel for applicant would submit that in the complaint there was receipt and seal of police department of the date on which the complaint against the complainant was lodged by the applicant. He submits that the complainant was continuously threatening the applicant to involve

him and his family members to some false case. She also gave threat of consuming some poisonous substance and one day she came to there house and threatened of jumping from balcony of their flat/ house to which somehow the applicant managed to convince her and to sent her back to house. Allegation of utilizing whitener in the report is an attempt to mislead the Court by the complainant.

7. I have heard learned counsel for the respective parties and also perused the case diary.
8. From the contents of F.I.R. it would show that initially the applicant came in contact with complainant in the year 2012. He proposed her in the year 2013 which was refused by complainant. Some dispute occurred between the complainant and the earlier boy Bhupendra Thakur which resulted in lodging criminal complaint and criminal case against that person. F.I.R. would further show that first physical relationship as alleged was developed by the applicant in the month of January 2015 though allegedly it was forceful against her will but she has not lodged any complaint regarding this before any authority nor to any other person. Thereafter, there was continuous physical relationship between them at several places on different occasions. She visited along with applicant to different places and stayed in hotels. The mobile chats which were placed on record by the applicant and relied upon to show the cause of reason for refusal of marriage with complainant was not refuted by the learned counsel for objector that the mobile chats were not of complainant but it is argued that on provocation some of the mobile chats have been forwarded. The complainant in the year 2014, before making physical relationship with applicant, had faced similar situation. She was aged about 25 years on the date of alleged first incident in the year 2015

and at present she is above 30 years of age and is a working lady.

9. Taking into consideration, the entirety of allegation levelled in the F.I.R./ complaint and material placed on record by the applicant and the complainant, without commenting anything on merits of the case, I find it a fit case where the applicant should be granted benefit of Section 438 of CrPC.
10. Accordingly, application is allowed and it is directed that in the event of arrest of applicant in connection with the crime in question (207/2021), 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 concerned arresting Officer. Applicant shall also abide by the following conditions:
 - (i) that the applicant shall make himself available for interrogation before the Investigation Officer as and when required;
 - (ii) 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;
 - (iii) that the applicant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
 - (iv) 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.

Sd/-
(Parth Prateem Sahu)
 Judge