

(Proceedings through video conferencing)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No.831 of 2021

- Lokesh Kumar Nirmalkar, S/o Shivkumar Nirmalkar, aged about 27 years, Caste-Nirmalkar, R/o Village Korbi, Police Station Baloda, District Janjgir Champa (CG)

---- Applicant

Versus

- State of Chhattisgarh, through the District Magistrate, District Janjgir Champa (CG)

---- Non-applicant

For Applicant	:	Mr. Vivek Singhal, Advocate
For Non-applicant	:	Mr. B.L. Sahu, Panel Lawyer.

Hon'ble Mr. Justice Parth Prateem Sahu

Order On Board

23/8/2021

1. This is an application under Section 438 of CrPC for grant of anticipatory bail to applicant as he apprehends his arrest in connection with Crime No.183/2021 registered at Police Station Baloda, District Janjgir Champa (CG) for commission of offence punishable under Sections 450, 376, 506 of IPC and Sections 4 & 6 of the Protection of Children from Sexual Offences Act, 2012.
2. Case of the prosecution, in brief, is that on 30.5.2021 father of prosecutrix after taking dinner had gone outside for wandering and the prosecutrix was alone in her house. At about 10.30 p.m. applicant came inside room of prosecutrix and forcibly committed sexual intercourse with her. When father of prosecutrix came back and found the room of prosecutrix locked from inside, he knocked the door of her room, whereupon prosecutrix screamed upon which he went near the pond, informed Santosh Pathak, Hemant Kumar Yadav, Omprakash Nirmalkar and Radhe Nirmalkar that some one is inside the room of her daughter. He came back his house along with aforementioned persons, got opened door of room of prosecutrix then present applicant ran away from there. Incident was reported to concerned police station on 7.6.2021 based on which instant crime is registered.

3. Mr. Vivek Singhal, learned counsel for applicant submits that absolutely false case has been registered against applicant. He submits that on 31.5.2021 at about 8:30 p.m. father of prosecutrix had assaulted on the head of father of applicant by axe. Incident was reported by applicant to concerned police station on the same day at about 9:30 p.m. based upon which crime was registered against Atmaram Vishwakarma, father of complainant. He further submits that after 4-5 days of incident dated 31.5.2021, during the course of treatment, father of applicant succumbed to injuries caused by father of complainant and only after death of father of applicant, instant complaint was made with intent to falsely implicate applicant. He further submits that except written complaint and oral evidence of prosecutrix, there is no material available in case diary to connect applicant with crime. Hence, applicant may be enlarged on anticipatory bail.
4. Mr. B.L. Sahu, learned Panel Lawyer for the State opposes the submissions made by learned counsel for applicant and submits that specific allegations have been levelled against applicant in written complaint filed by prosecutrix in the concerned police station on 7.6.2021. He further submits that when father of prosecutrix came back to house at about 11 p.m. in night and noticed that some person is present in room of prosecutrix, he bolted doors of room of prosecutrix from outside, went out of the house and returned along with Santosh Pathak, Hemant Kumar Yadav, Omprakash Nirmalkar & Radhe Nirmalkar and opened the door in their presence. On opening the door, applicant fled away from the spot in presence of aforementioned persons. However, on putting a specific query as to whether statement of aforementioned persons under Section 161 of CrPC have been recorded or not, he replied that statement of these persons are not available in case diary. He read over MLC of the prosecutrix dated 7.6.2021 and submits that the doctor, who medically examined the prosecutrix, did not notice any injury on her private part and opined that no definite opinion regarding recent

sexual intercourse with prosecutrix could be given.

5. I have heard learned counsel for parties. Perused case diary.
6. Taking into consideration the nature of allegations; the fact that written complaint of incident dated 30.5.2021 is made only on 7.6.2021; father of prosecutrix has assaulted on the head of father of present applicant on 31.5.2021 by means of axe which has resulted into his death after 4-5 days of incident during the course of treatment; except statements of prosecutrix and her father, there is no other evidence, without commenting anything on merits, I am inclined to grant benefit of anticipatory bail to applicant.
7. Accordingly, this anticipatory bail application is allowed and it is directed that in the event of arrest of applicant in connection with 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. Applicant shall also abide by following conditions:
 - (i) that he shall make himself available for interrogation before 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 facts of case so as to dissuade him/her from disclosing such facts to 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 & every date given to him by said Court till disposal of trial.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-