

(Proceedings through video conferencing)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No.856 of 2021

- Harihar @ Sambhu, S/o Kunjhbihari aged 35 yers, Caste Mahqul, R/o Village Puranga, Tahsil Bagicha, Distict Jashpur (CG)

---- Applicant

Versus

- State of Chhattisgarh, through the Station House Officer Police Station Bagicha, District Jashpur (CG)

---- Non-applicant

For Applicant	:	Mr. Awadh Tripathi, Advocate
For Non-applicant	:	Mr. Vimlesh Bajpai, Govt. Advocate

Hon'ble Mr. Justice Parth Prateem Sahu

Order On Board

26/8/2021

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.120/2021 registered at Police Station Bagicha, District Jashpur (CG) for commission of offence punishable under Sections 450, 376 of IPC.
2. Case of the prosecution, in brief, is that on 14.6.2021 at about 7;00 a.m. applicant entered into house of prosecutrix and forcibly committed sexual intercourse with her. When the applicant was committing forcible sexual intercourse with prosecutrix, one Arvind Tirkey came inside house of prosecutrix and saw applicant committing sexual intercourse with prosecutrix. On the basis of complaint of prosecutrix, FIR is registered against applicant.
3. Mr. AwadhTripathi, learned counsel for applicant would submit that applicant has been roped in a false case. Allegation levelled against applicant is false and baseless for the reason that the applicant being President of Jai Vividhta Prabandhan Samiti, Gram Panchayat Tangardih has taken action against the complainant and her husband on 16.11.2020 when they tried to encroach upon forest land. He further submits that alleged witness Arvind Tirkey is also a planted witness. In the

panchayat elections, applicant has supported the candidate who defeated the wife of Arvind Tirkey, therefore, he is keeping grudge against him. He further submits that the doctor, who medically examined the prosecutrix, did not notice any mark of injury on her whole body including private part. The prosecutrix is able bodied healthy woman of 45 years age, if the allegation of forceful sexual intercourse levelled against applicant is taken as true, then there must have been some marks of struggle on the body of prosecutrix. But, in case at hand, the doctor, who medically examined the prosecutrix on 14.6.2021 i.e. on the date of incident itself, did not notice any mark of injury like bruises, abrasions or scratches, on the body of prosecutrix. This fact itself suggests that allegation of rape levelled against applicant is false and baseless. Hence, applicant may be enlarged on anticipatory bail.

4. Mr. Vimlesh Bajpai, learned Government Advocate for the State opposes the submissions made by learned counsel for the applicant and submits that while applicant was committing forcible sexual intercourse with prosecutrix, Arvind Tirkey came on the spot and saw the applicant committing forcible sexual intercourse with prosecutrix. He also referred to the statement of Secretary, Gram Panchayat Tangardih who has stated that gram panchayat has not constituted any such committee, as claimed by applicant. He has further stated that in the year 2019 the applicant himself had constituted the committee, brought documents before him and he has only put his seal and signature on documents. He further submits that there is criminal antecedent of applicant as in the year 2015 also similar offence was registered against him.
5. At this stage, Mr. Awadh Tripathi, learned counsel for applicant submits that the Committee is constituted by the Forest Department and minutes of Committee dated 31.7.2019 (Annexure A-2) also bears seal and signature of Ranger Assistant, Bagicha. In the criminal case of the year 2015, applicant was acquitted.

6. I have heard learned counsel for parties.
7. Taking into consideration nature of allegations levelled against applicant; contents of FIR, statement of prosecutrix recorded under Section 164 of CrPC as also statement of eyewitness Arvind Tirkey and the material collected by the prosecution, particularly MLC report of prosecutrix, without commenting anything on merits, I am inclined to grant benefit of anticipatory bail to applicant.
8. 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/-