

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC (A) No.941 of 2021**

- Chandra Kumar Sahu, @ Abhishek, S/o Shri Deshram Sahu, aged about 35 years, By Caste- Teli, R/o Kotra Road, Rajeev Nagar, Raigarh, Thana Raigarh, District Raigarh (CG)

---- Applicant**Versus**

- State of Chhattisgarh Through Station House Officer, Police Station Patthalgaon, District Jashpur (CG)

---- Non-applicant

For Applicant	:	Mr. Sunil Sahu, Advocate.
For Non-applicant	:	Mr. Srikant Kaushik, Panel Lawyer. Mr. Jagannath Kaushik, father of the prosecutrix is present in person through virtual mode from the DLSA, Jashpur.

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

13/9/2021

1. This is first application under Section 438 of CrPC for grant of anticipatory bail to applicant as he apprehends his arrest in connection with Crime No.180/2018 registered at Police Station Patthalgaon, District Jashpur (CG) for commission of offence punishable under Section 376 (2) (n) of the Indian Penal Code and Section 4 of the Protection of Children's from Sexual Offences Act, 2012 (for short 'the Act of 2012').
2. Case of the prosecution, in brief, is that prosecutrix was taking training of computer from Computer Centre of applicant situated at Raigarh Road, Pathalgaon. During training period of prosecutrix, applicant asked her to help him in teaching other students upon which she started teaching students in computer centre of applicant. On 1.6.2015 after the students left the computer centre, the applicant had forcibly committed sexual intercourse with prosecutrix and thereafter threatened her not to disclose incident to anyone. Thereafter, on number of occasions, applicant had established physical relations with

prosecutrix on the pretext of marrying her. On 21.11.2016 applicant took the prosecutrix to Raigarh from Pathalgaon stating that he is having one another computer training centre in Raigarh, he will depute her as In-charge of that computer centre. In Raigarh, applicant kept the prosecutrix in a tenanted accommodation and there also established physical relations with her on the pretext of marriage. Prosecutrix returned back to her parents' home situated in Raigarh on 18.3.2018. On 28.6.2018 prosecutrix received a copy of notice issued by Family Court, Raigarh on an application being filed by applicant under Section 9 of the Hindu Marriage Act, 1955 (for short 'the Act of 1955') for restitution of conjugal rights between them. On 26.7.2018 the prosecutrix lodged written complaint against applicant based upon which crime in question is registered.

3. Mr. Sunil Sahu, learned counsel representing applicant would submit that even on alleged first date of incident i.e. in the year 2015, the prosecutrix was above 18 years of age, hence the provisions of the Act of 2012 will not be attracted in present case. He further submits that in written complaint itself prosecutrix has mentioned that the applicant has performed marriage with her. When prosecutrix left company of applicant, he filed an application under Section 9 of the Act of 1955 before the Family Court, Raigarh of which notice has been duly served on prosecutrix (non-applicant therein) on 28.6.2018. He submits that in written complaint the prosecutrix has admitted marriage between her and applicant and also service of notice upon her by Family Court. This itself shows that allegation of rape or forcible sexual intercourse levelled by prosecutrix against applicant is false. Hence, the applicant may be enlarged on anticipatory bail.
4. On the other hand, Mr. Srikant Kaushik, learned Panel Lawyer for the State opposes the submissions made by learned counsel for applicant and submits that as per allegations made

in written complaint dated 26.7.2018, applicant has forcibly committed sexual intercourse with prosecutrix on number of occasions, firstly on 1.6.2015. He submits that age of prosecutrix, as mentioned in FIR is 20 years, hence considering the age of prosecutrix in the year 2015, the offence punishable under Section 4 of the Act of 2012 has also been registered. However, upon putting specific query whether any material is collected by police showing age of prosecutrix, he submits that during the course of investigation, police collected *Dakhil Kharij Panji* (School Admission Register) in which date of birth of prosecutrix is mentioned as 30.6.1995. He submits that in written complaint the prosecutrix has mentioned about the marriage between her and applicant as also receipt of notice of application under Section 9 of the Act of 1955 from Family Court prior to filing of written report by her.

5. I have heard learned counsel for the parties.
6. Taking into consideration the nature of allegations levelled against applicant; date of birth of prosecutrix as mentioned in *Dakhil Kharij Panji* (Admission Register) of the school of prosecutrix collected by police in the course of investigation i.e. 30.6.1995; contents of written complaint wherein prosecutrix has mentioned that she and applicant have performed marriage; and further considering the fact that written complaint is lodged on 26.7.2018 i.e. only after service of notice of application filed under Section 9 of the Act of 1955 from Family Court, Raigarh on 28.6.2018, without commenting anything on merits of case, I am inclined to enlarge applicant on anticipatory bail.
7. Accordingly, application filed under Section 438 of CrPC for grant of anticipatory bail is allowed. 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/- (Rupees Twenty Five Thousand) with one surety in the like sum to the satisfaction of the Arresting Officer. 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/-