

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 1063 of 2021**

- Akshay Tiwari, S/o Shri Anil Tiwari, Aged About 30 Years, R/o Shikshak Nagar, Beside Sarwapalli Radhakrishanan Garden, Shikshak Nagar, District : Durg, Chhattisgarh Mobile No.94241-52663.

---- Applicant**Versus**

- State of Chhattisgarh Through The Station House Officer, P.S. Tikrapara, Raipur, District : Raipur (CG)

---- Respondent

For Applicant	: Shri BP Sharma, Advocate
For Respondent/State	: Shri BP Banjare, Dy GA

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board**08.09.2021**

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. 165 of 2021 registered at Police Station Tikrapara, Raipur (CG) for commission of offense punishable under Section 376 of IPC.

2. Case of the prosecution, in brief, is that, prosecutrix and applicant are known to each other since last three years. When prosecutrix was in her relatives house at Durg, applicant asked her to come with him to attend one marriage ceremony, upon which, she agreed and accompanied him in his Car. On 26.11.2020, at about 5 pm applicant took complainant from Durg to Raipur in his Car. Complainant asked applicant to drop her in her house, applicant took her to several places and after dinner, she was brought to her house. Complainant went to kitchen to bring water for applicant, then he closed the door and pushed complainant on Sofa and thereafter committed forceful intercourse with her. When complainant was crying on account of illegal act of applicant, he stated and assured her that he will perform marriage with her. After that incident, on several

occasions and at different places ie in house of complainant, and also at hotel, applicant had made physical relationship with her on the pretext of marriage. Applicant turned out from his words and refused to marry her, which made complainant to lodge report at concerned Police Station on 03.06.2021, based upon which aforementioned crime was registered against applicant.

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

4. Shri BP Sharma, learned counsel for the applicant would submit that applicant has not committed any crime as alleged against him. He submits that complainant is an educated, working lady, aged about 32 years on the date of alleged incident. Applicant has not committed any offence as alleged against him. Even if allegations are taken to be correct, physical relationship between complainant and applicant is consensual, as the incident is not occurred once, but on several occasions as per allegations made in FIR. Complainant is an influential person and only to mount pressure on applicant, she made complaint to Police, as well as State Women Commission. On account of her influence, Police mount pressure upon applicant and forced him to execute agreement /compromise /settlement deed between complainant and applicant, which was signed by them on 24.05.2021. He relies on judgment of Hon'ble Supreme Court in case of **Sonu @ Subhash Kumar Vs State of UP and another** reported in 2021 SCC Online SC 181 in support of his case and submits that when physical relationship is consensual and only on the ground of marriage and subsequently there was denial from the part of applicant for marriage, offence under Section 376 would not be made out, hence applicant may be benefited under Section 438 of CrPC.

5. On the other hand, Shri BP Banjare, learned counsel for the State opposing the submissions of learned counsel for the applicant, submits that from the contents of FIR, it is apparent that the first physical intercourse by the applicant was forceful, without her free will. Other instance of making physical relationship as mentioned in FIR and complaint of prosecutrix, is on the pretext of marriage. He further pointed out that applicant being a Contractor, is an influential person, hence complaint made by prosecutrix was not registered as FIR immediately, and Police informed applicant and only thereafter agreement was executed on 24.05.2021 between the parties. Applicant has agreed to marry with prosecutrix. Learned State counsel further submits that applicant has not only executed settlement deed but also executed an affidavit before Notary, which is also part of case diary.

6. Shri Pragalb Sharma, learned counsel for objector/complainant would submit that even after several attempts made by prosecutrix, her complaint was not registered by the Police and FIR was registered only after her filing of complaint before State Women Commission, which shows approach and intimacy of applicant with higher officials of the State, hence applicant is not entitled for anticipatory bail under Section 438 of CrPC. He also submits that the consent of prosecutrix as argued by counsel for the applicant is not consent under Section 90 of IPC. However, upon putting a specific query to learned counsel for the State as well as counsel for complainant with regard to qualification, occupation and age of prosecutrix, they submit that in record age of prosecutrix is shown as 33 years, working as a part-time Teacher at Navodaya Vidyalaya, Saraipali, District Mahasamund, having PhD Degree and also a Poet/writer.

7. I have heard learned counsel for the parties.

8. Taking into consideration allegations levelled against applicant in FIR, age of complainant, her education, qualified lady working as Teacher at Navodaya School, without commenting anything on merits of the case, I am inclined to grant anticipatory bail to the applicant.

9. Accordingly, the 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/- (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/her by the said Court till disposal of the trial.

Certified copy as per rules.

Sd/ -
(Parth Prateem Sahu)
JUDGE

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