

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 738 of 2020**

- Ajay Singh S/o Late Chetnarayan Aged About 50 Years R/o In Front Of I.T.I. Gate, Main Road Koni, Bilaspur, Police Station Koni, Tahsil And District Bilaspur, Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh Through: District Magistrate, Bilaspur, District: Bilaspur, Chhattisgarh.

---- Respondent

For Appellant	-	Shri Ashish Gupta, Advocate
For Respondent	-	Shri Ayaz Naved, Government Advocate.
For Objector	-	Shri Malay Shrivastava, Advocate.

Hon'ble Justice Shri Prashant Kumar Mishra**Order On Board****06/01/2021**

1. Heard
2. The appellant has preferred this appeal for grant of anticipatory bail, as he apprehends his arrest in connection with Crime No.168/2020, registered at Police Station Koni, Distt: Bilaspur, Chhattisgarh for the offences punishable under Section 354 of Indian Penal Code, Section 8 of the Protection of Children from Sexual Offences Act, and Section 3(1) B(i) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

3. For an incident happened on 05-08-2020 alleging outraging her modesty the prosecutrix lodged FIR on 10-08-2020 however, prior to this, the appellant has already lodged a complaint with the concerned Police on 05-08-2020 alleging that the prosecutrix had approached him for arranging some work during lockdown which he refused, thereafter, she went away threatening.
4. Learned counsel for the appellant submits that the prosecutrix or her mother are habitual in making complaints against different individuals at different point of time as would reflect from the reply by the concerned Police on application moved by the appellant's wife under the Right to Information Act. He would submit that the present complaint is absolutely false and no such incident as alleged in the FIR, has ever taken place.
5. Per contra, learned State counsel and learned counsel for the objector would vehemently oppose the application on submission that the prosecutrix has been molested and in subsequent statement under Section 164 of Cr.P.C. also she has confirmed the incident.
6. According to the learned counsel for the objector, the lodging of the report by the appellant on 05-08-2020 itself demonstrate that some incident had taken place on said date. Therefore, prima facie, the contents of the FIR cannot be disbelieved.

7. Having considered rival submissions and on perusal of the FIR together with the documents annexed with the bail application, it appears the prosecutrix is in the habit of lodging complaints against different individuals. It is also reflected from reply to the RTI query that a case of committing fraud is also pending against mother of the prosecutrix. It is also to be seen that the present FIR is delayed by 5 days. Thus, if a serious incident of outraging the modesty has taken place and the prosecutrix and her mother as well are in the habit of approaching police station for every incident which has occurred for last 3-4 years, there is no reason as to why the FIR could not have been lodged on the same date. It is a case where the concerned Police Station is located within 2 km of the place of incident and otherwise also the concerned village is in the outskirts of Bilaspur city.
8. This Court is alive to the provisions contained in the Section 18 of the Act, 1989. However, despite the said provision, if the fact of false implication cannot be ruled out and there is delay in lodging the FIR coupled with previous report by the appellant, it causes serious dent in the prima facie case of the prosecutrix.
9. On perusal of the material available in the case diary, it appears, while considering the prayer for grant of bail, the Court below has committed serious error of jurisdiction, inasmuch as, it should have objectively considered the said prayer by having a close look on the material against the accused. While exercising judicial discretion for grant of bail,

the trial Court is not expected to conduct an exercise in formality but the same should reflect from the material and further, cogent reasons must be assigned while rejecting the bail application.

10. Therefore, considering all relevant aspect of the matters, I am inclined to release the appellant on anticipatory bail.

11. Accordingly, the appeal is allowed and the impugned order is set-aside.

12. The appellant is directed to be released on bail on his executing a personal bond for a sum of Rs.50,000/- with one surety for the like amount to the satisfaction of the Arresting Officer with the following conditions:

- (I) he shall make himself available for interrogation by a police officer as and when required.
- (II) 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 from disclosing such facts to the Court or to any Police Officer.
- (III) he shall not influence the witnesses during pendency of the trial.

Certified copy as per rules.

SD/-
(Prashant Kumar Mishra)
Judge