

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 7196 of 2021**

- Ajay Kaushik, S/o Lalit Kumar Kaushik, Aged About 35 Years, R/o 12/11, Priyadarshani Parisar (East), Supela, Bhilai, Tehsil, Civil & Revenue District - Durg (Chhattisgarh).

---- Applicant**Versus**

- State of Chhattisgarh Through District Magistrate - Durg, Distt.- Durg (Chhattisgarh).

---- Respondent

For Applicant	:	Mr. Jaydeep Singh Yadav, Adv.
For Respondent/State	:	Mr. Sameer Sharma, Dy. G.A.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****27.10.2021**

1. The accused/applicant has moved this first bail application under Section 439 of Criminal Procedure Code for releasing him on regular bail during trial in connection with Crime No. 419/2020 registered at Police Station- Supela, District- Durg (C.G.) for the offence punishable under Sections 377, 498A r/w 34 of IPC, Section 4 and 5 of Dowry Prohibition Act.
2. According to the case of the prosecution, present applicant is the husband of the complainant. Marriage between applicant and the complainant was solemnized on 21.11.2019 at Dhamtari. On 28.06.2020, a written complaint filed against the applicant by the complainant wherein it has been alleged that after her marriage, applicant and other co-accused persons started harassing her on account of demand of dowry. On the basis of complaint made by the complainant, initially, offence under Section 498-A, 34 of the IPC was registered. During course of investigation, statement of complainant under Section 164 of Cr.P.C. was recorded and on the basis of her statement, offence under Section 377 of the IPC

was added.

3. Learned counsel for the applicant submits that earlier he has filed anticipatory bail application before this Court which was dismissed by this Court on 19.01.2021 passed in MCRCA No. 1757/2020. On 23.08.2021, he filed anticipatory bail application before Hon'ble the Apex Court which was dismissed by Hon'ble the Apex Court with some direction and as per order of Hon'ble the Apex Court, applicant shall surrender before the trial Court and deposit his mobile phone to the concerned police and there is no need of the present applicant by the Investigating Agency. This High Court in MCRCA No. 1757/2020 and the Hon'ble Apex Court while discussing the case of the present applicant in SLP(crl) No. 5793-5794/2021 has also recorded the finding that the offence of Section 377 of the IPC was made for the first time while recording the statement u/s 164 of Cr.P.C. and there was no allegation of Section 377 of IPC in the FIR. The entire allegations levelled against the applicant by the complainant are false and fabricated and afterthought only to harass the applicant. It is clear from Whatsapp chat and photographs, the relations between the complainant and the applicant were cordial, but complainant did not wish to live with parents of the applicant. She lived in her matrimonial home for a period of 58 days and she went to her parental house on 28.01.2020. Thereafter, applicant sent a legal notice dated 28.05.2020 seeking Restitution of Conjugal Righth then complainant filed FIR against the applicant on false and fabricated grounds. Applicant is a permanent resident of the address as shown in the cause-title, therefore, there is no chance of him absconding or tampering with the prosecution witnesses. Applicant is ready to abide all terms and conditions which may be imposed by this Hon'ble Court, while granting regular bail.
4. On the other hand, counsel for the State opposes the bail application.
5. I have heard learned counsel for the parties and perused the material available on record.

6. It is clear from the copy of FIR (Annexure A/2), previously the FIR has been registered under Section 498-A of IPC and after some time when statement of complainant has been recorded under Section 164 of IPC and on the basis of her statement, offence u/s 377 of the IPC was added.
7. Looking to the whatsapp chat and other material available on record and further considering the detention period of the applicant, the trial is likely to take some time for its final disposal, this Court is of the view that it is a fit case to release the applicant on bail. Accordingly, the application is allowed.
8. Accused/applicant is directed to be released on bail on his executing a personal bond in the sum of Rs. 25,000/-, with one local surety in the like sum to the satisfaction of the trial Court. He is directed to appear before the trial Court on each and every date given to him by the said Court.

**Sd/-
(Rajani Dubey)
Judge**