

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MCRCA No. 1140 of 2021**

- Santosh Banjare @ Bau S/o Mulchand Banjare aged about 30 Years R/o Sambalpuri, Police Station and Tahsil- Bilha, District- Bilaspur Chhattisgarh.

-----Applicant**VERSUS**

- State of Chhattisgarh through: SHO, Police Station Hirri District Bilaspur, Chhattisgarh

-----Non-applicant

For Applicant	: Mr. Dashrath Prajapati, Advocate
For Non-applicant- State	: Mr. Shrikant Kaushik, Panel Lawyer.

Hon'ble Shri Parth Prateem Sahu, Judge**ORDER ON BOARD****29/09/2021**

1. Applicant has preferred this application under Section 438 of CrPC for grant of anticipatory bail as he apprehends his arrest in connection with Crime No. 144/2019 registered at Police Station Hirri, District Bilaspur (C.G.) for the offence punishable under Sections 376, 34 of IPC.
2. Case of the prosecution in brief, is that, prior to 15.09.2019, prosecutrix was receiving phone call on her mobile and on 15.09.2019, on mobile call, a person speaking from other side has stated his name to be Manmohan Banjare called the prosecutrix near Bilha turn, upon which she came to Bilha turn and met with Manmohan Banjare. He took the prosecutrix with other persons accompanied him to unknown place and committed forceful intercourse. The other two persons including present applicant caught hold the prosecutrix while Manmohan Banjare committed

forceful intercourse. At the time of alleged incident, one person on his motor cycle came near the spot, looking to which accused person fled away from the spot. Incident was reported to concerned police station on telephone call. When the police personnels came to the spot they saw prosecutrix lying on the field. The act of accused persons was intimated by her and thereafter report was lodged against present applicant, Manmohan Banjare, Pundas and other three persons.

3. Mr. Dashrath Prajapati, learned counsel for the applicant would submit that applicant has been falsely implicated in the crime, he has not been named in the complaint or in the FIR by the prosecutrix in committing of offence under Section 376 IPC. He submits that the person by name Rajesh Dahariya who reached to the spot of incident on his motor cycle while returning from the house of his friend is resident of place where applicant resides and having enmity with him, hence, false allegations have been levelled against him. He further pointed out that the applicant in support of his contention filed affidavit of Harishchand Chaturvedi stating that Rajkumar Banjare was having enmity with applicant, hence, he is falsely implicated in the case. In view of the fact that applicant is not named in the complaint as person committing sexual intercourse, he may be enlarged on anticipatory bail.
4. On the other hand, Mr. Shrikant Kaushik, learned State counsel opposes the submissions made by learned counsel for the applicant and submits that the complainant in her statement has specifically named the applicant along with Manmohan Banjare and Pundas. Applicant assisted the accused person in commission of crime under Section 376 IPC and present on spot holding prosecutrix, hence, he is not entitled for benefit under Section 438 of CrPC. In support of his

contention he read-over the statement of Rajesh Dahariya who reached the spot at the time of incident, seeing him the accused persons ran away from the spot and also he was present at the spot till the police persons came. He submits that police recovered one purse in which photograph of applicant was found, hence, the applicant is not entitled for relief as sought for.

5. I have heard learned counsel for the respective parties.
6. Taking into consideration, the nature of allegations, the manner in which the crime was committed, statement of prosecutrix and Rajesh Dahariya who is stated to be independent witness to the incident, I am not inclined to allow the application for anticipatory bail.
7. Accordingly, application is dismissed.

Sd/-

(Parth Prateem Sahu)
Judge

Pawan