

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C.(A) No. 1536 of 2020****reserved on 22-1-2021****Delivered on 25-1-2021**

1. Ganga Sagar Yadav S/o Shri Udaynath Yadav Aged About 47 Years
Occupation Agriculturist
2. Bachchha Yadav S/o Shri Sukhadi Yadav Aged About 57 Years
Occupation Agriculturist

Both R/o Village Patkura, Ghatonpara, Police Chowki Kedma, Police Station
Udaypur, District Surguja, Chhattisgarh

---- Applicants**Versus**

State of Chhattisgarh Through Station House Officer, Police Station
Udaypur, District Surguja, Chhattisgarh

---- Non-applicant

For Applicants	: Mr. Jitendra Shrivastava, Advocate
For State/Non-applicant	: Mr. D.C. Verma, G.A.

Hon'ble Shri Justice Sharad Kumar Gupta
CAV ORDER

1. This is second anticipatory bail application of the applicants. Earlier their first anticipatory application was rejected by this Court vide order dated 29-11-2018 passed in MCRCA No. 492/2018 considering prima facie case against them.
2. Apprehending arrest in connection with Crime No. 80/2017, registered at Police Station Udaypur, Distt. Surguja for the offence punishable under Section 376(d) and 506 of the Indian Penal Code, the applicants have filed the 2nd bail application under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail.
3. Case of the prosecution, in brief, is that the prosecutrix was aged about 50 years. She is a resident of village Patkura, Ghatonpara. On 16-

7-2017, she had gone to forest for grazing the cattle. Applicants reached there and committed forcibly sexual intercourse with her one by one and threatened to kill her.

4. Counsel for the applicants submitted that prosecutrix filed an affidavit dated 25-11-2019 marked as Annexure A-4 which is part of the bail application, wherein she stated that the applicants had not committed rape with her. He further submitted that during the verification of Annexure A-4 by non-applicant her statement was recorded wherein she reiterated the same. The photocopy of said statement is part of the bail application. He further submitted that prosecutrix and the applicants are relative hence prosecution story is highly improbable. He further submitted that in similar situation case, coordinate bench of this Court granted anticipatory bail to applicant. He drew my attention on Annexure A-5 which is part of this bail application. Hence, the applicants may be released on anticipatory bail.

5. On the other hand, counsel for the State would oppose the prayer for grant of anticipatory bail to the applicants however he submits that no criminal antecedent is reported against the applicants in police case diary.

6. Along with the 1st anticipatory bail application allegedly a copy of an application of prosecutrix addressed to SP Ambikapur was filed wherein it was stated that on dissembling of other persons she had made the complaint against the applicants regarding possession of the land. An affidavit of alleged prosecutrix was also filed wherein said fact was reiterated. During the verification concerned SHO had recorded her statement wherein she stated that she had lodged a report against the applicants regarding rape and one advocate had obtained her thumb impression in plain paper. As per the alleged affidavit dated 25-11-2019 prosecutrix had lodged the false report against the applicants on dissembling of villagers and undue pressure of police. As per statement of prosecutrix recorded during the verification of Annexure A-4 she lodged the report of rape against applicants on saying of her *Devar* Nanka Yadav. As per the statement of prosecutrix recorded under Section 164 of Cr.P.C. by the JMFC she stated that applicants had committed rape with her. In these circumstances, at this stage no waitage can be given on alleged affidavit annexure A-4. Moreover, as

per the order of the coordinate bench Annexure A-5 no legal principle has been laid down. In these circumstances, this Court finds that applicants do not get any help from the aforesaid order passed by the coordinate bench of this Court and this Court finds that this is not the fit case where applicants may be released on anticipatory bail in second round of litigation.

7. Consequently, their 2nd anticipatory bail application is rejected.

Sd/-
(Sharad Kumar Gupta)
JUDGE

Pathak/-