

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****MCRCA No. 1540 of 2020**

- Luv Kumar Chungani S/o Ramchandra Chungani, A/a 35 years, R/o Shop - Camp 02, Suryanagar Falmandi Bhilai, Police Station Chhavni, District Durg (C.G.) Home - MIG-49, Vaishali Nagar, Supela Bhilai, District Durg (C.G.)

**---- Applicant****Versus**

- State of Chhattisgarh - Through : Police Station Chhavni, Bhilai, District Durg (C.G.)

**---- Respondent**


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| For Applicant   | : | Mr. Arvind Shrivastava, Advocate. |
| For Respondent. | : | Mr. Sudeep Verma, Dy.G.A.         |
| For Complainant | : | Mr. Shikhar Bakhtiyar, Advocate.  |

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**Hon'ble Smt. Justice Rajani Dubey****Order on Board****07/06/2021**

Proceeding through video conferencing.

1. This application under Section 438 of the Code of Criminal Procedure has been filed by the applicant who is apprehending his arrest in connection with Crime No.514/2020 registered at Police Station - Chhavni, Bhilai, District Durg (C.G.) for commission of the offence punishable under Section 376 (2) (n) of Indian Penal Code.
2. The prosecution story, in brief, is that the Prosecutrix was working as labour in the fruit shop of applicant since 10.09.2019. On 14.09.2019 at 5.00 pm, when day's work was over and other workers had gone, the prosecutrix went inside the shop to keep the apple box. At the relevant time, the applicant caught hold of her, lay her down and committed

sexual intercourse saying that he will keep her as his wife. Thereafter, the applicant repeated the said act many times on the pretext of marriage and ultimately he refused to marry her. Based on this, offence under Section 376 (2)(n) of IPC has been registered against the applicant.

3. Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the crime in question. He further submits that the prosecutrix is not only a major lady but also a married woman and she is a consenting party to the act of the applicant. He also submits that 23.03.2021 during the course of hearing, the prosecution has disclosed that the additional offence under SC/ST Act has also been added and on 01.04.2021, notice to victim was directed to be issued in view of provision contained under Section 15-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act 1989'). Learned counsel also submits that the prosecutrix was working as labour in his fruit shop and he has not committed the act because of her being the member of reserved category. Therefore, the applicant may be granted anticipatory bail.
4. Counsel for the State however opposes the application for anticipatory bail.
5. Prosecutrix is present before this Court via video conferencing and submits that she has no objection if the applicant is granted anticipatory bail.
6. The Co-ordinate Bench of this Court, in the matter of **Pavas Sharma Vs. State of Chhattisgarh and another (CRA**

**No. 806/2020, order dated 22.01.2021**), has elaborately dealt with the issue pertaining to offence under the Act, 1989 and finds that merely because offence under Section 3(2)(V) (a) of the Act, 1989 has been registered against the applicant, it cannot be held to be not maintainable in view of the provisions contained under Section 18 of the Act of 1989, without taking into consideration the law laid down by the Supreme Court in the case of **Prathvi Raj Chouhan Vs. Union of India and Others**<sup>1</sup>. Even though, offence under the Act of 1989 is registered, where application for grant of anticipatory bail is filed, the Court is required to apply its mind to the relevant provisions of law and considerations as specified by the Supreme Court in the case of **Prathvi** (supra) and if material on record leads to satisfaction that the complaint does not make out a prima facie case, for applicability of the provisions of the Act of 1989, the bar created under Section 18 of the Act of 1989 shall not apply and in appropriate cases of exceptional nature, benefit of anticipatory bail could be admitted to the applicant. Order of rejection, therefore, cannot be sustained in law, and therefore set aside.

7. After hearing counsel for the parties and considering the facts and circumstances of the case, and in view of the order passed by this Court in **Pavas** (supra), this Court is of the considered opinion that it is a fit case to grant anticipatory bail to the appellant. Accordingly, the appeal is allowed. It is directed that in the event of arrest of the appellant in

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<sup>1</sup> (2020) 4 SCC 727

connection with aforesaid crime number, he shall be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- with one surety for the like sum to the satisfaction of the concerned arresting/investigating officer or the court concerned, as the case may be, with the following terms and conditions:

- (i) that the appellant shall make himself available for interrogation before the concerned investigating officer as and when required;
- (ii) that the appellant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case as to dissuade him/her from disclosing such facts to the Court or to any police officer;
- (iii) that the appellant shall not act in any manner which will be prejudicial to fair and expeditious trial; and
- (iv) that the appellant shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

**Sd/-**

**(Rajani Dubey)**  
**Judge**