

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No.1577 of 2020**

Bhagwat Jaiswal S/o Late Shri Babulal Jaiswal Aged About 38 Years By Occupation Government Servant Presently Posted As Joint Collector At District Mahasamund Chhattisgarh, R/o Rajapara , Sakti , Police Station Sakti District Janjgir Champa Chhattisgarh, Present Address F 04, Old Civil Lines, District Mahasamund Chhattisgarh. ---- **Applicant**

Versus

The State Of Chhattisgarh Through Police Station Mahila Thana , District Raipur Chhattisgarh ---- **Respondent/State**

For Applicant	:	Mr. D.K. Gwalre, Advocate.
For Respondent/State	:	Mr. K.K. Singh, Government Advocate
For Objector	:	Mr. T.K. Jha, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**CAV Order****11/06/2021**

Heard.

1. The applicant is apprehending his arrest in connection with Crime No.45/2020 registered at Police Station – Mahila Thana, Raipur (C.G.) for alleged commission of offence under Section 498-A of IPC.

2. The case of the prosecution is that the applicant and complainant were married on 11.03.2011. It has been alleged that after marriage, the applicant/ husband was insisting for financial assistance time and again and golden bangles gifted during marriage were taken in the name of arranging money for marriage of brother-in-law and even thereafter, the complainant was being compelled to make financial arrangement and demands were also made for purchase of vehicle. In course of time, the relationship got strained and there used to be frequent quarrel on family affairs particularly financial aspects and the applicant/husband had abused and assaulted when complainant was pregnant. The complainant, to save the esteem, under the pressure of the family and her own office as Judicial Official, kept on tolerating. In the year 2013, husband was selected as Accounts Officer and then as Deputy Collector

and then the complainant/wife came to know about his illicit relationship. On 09.06.2019, she came to know about her husband meeting with the lady with whom he was having illicit relation. It led to quarrel, wife was insulted and the applicant not only threatened her to kill but also threatened that he would also commit suicide. On these allegations, offence under Section 498-A of IPC was registered against the present applicant.

3. Learned counsel appearing for the applicant would submit that because of long standing dispute between the husband and wife, now an afterthought ground and exaggerated version is being put forth by the wife/complainant. The applicant would submit that the allegations against the applicant are either relating to old stale incident, that too without any specific material or those which are connected with alleged illicit relation of the applicant with another woman. Learned counsel for the applicant would submit that the marriage was solemnized long back in the year 2011 and the report alleging commission of offence under Section 498-A of IPC has been lodged only recently and that too does not contain any specific incident of any assault or physical violence but only general allegation and there is no material to show that upon medical examination, any injury was found on the body of the complainant. Relying upon the decision of the Hon'ble Supreme Court in the case of **Arnesh Kumar Vs. State of Bihar and another, 2014(8) SCC 273**, learned counsel for the applicant would submit that as the applicant, himself, is a Government Servant and Class-II Gazetted Officer holding responsible position, he may be extended benefit of anticipatory bail as he is not likely to abscond and there is no possibility of applicant misusing the liberty because the complainant herself is a judicial officer.

4. On the other hand, learned counsel for the State and Objector oppose the prayer for grant of anticipatory bail and submit that a detailed FIR has been lodged by the complainant in the Police Station on 08.07.2020, in which, details of cruelty to which the complainant has been subjected by the applicant ever since marriage solemnized in the year 2011, have been given. It is argued that right from the beginning, the applicant was not only harassing the complainant/wife and her family for arranging more and more funds for various reasons including marriage of his brother but he was also insisting for arranging money for payment of vehicle. Not only this, when the wife was pregnant she was subjected to physical violence also. Time and again, mostly on financial matters, the applicant has been harassing the wife/complainant

who is Judicial Officer. Later on, when the husband was selected and appointed Deputy Collector, the wife came to know about his illicit relation and when this was exposed in the year 2017, she was subjected to insult, abuse and threat of murder. The complainant is a responsible Judicial Officer and there is no likelihood of her making any false and fabricated complaint against her own husband. It is submitted that the benefit of anticipatory bail could not be extended as has to be granted only in exceptional circumstances.

5. I have heard learned counsel for the parties and also perused the case diary of the case. From the FIR which has been lodged on 08.07.2020 itself, it is revealed that the FIR has been lodged after about 9 years of marriage. The contents of the FIR prima facie reveals that main operative reasons behind the dispute between the applicant/husband and complainant/wife are financial issues and alleged illicit relationship of the applicant with another woman. The allegation of complainant having been subjected to physical violence during the course of her pregnancy was not immediately reported anywhere and the complainant has chosen to allege the same only after a dispute between the husband and wife emerged because of alleged illicit relationship of the applicant with another woman. There is no report of medical examination showing that the complainant was subjected to any physical violence in which she sustained any injury. The Hon'ble Supreme Court in the case of *Arnesh Kumar (supra)* has observed as below :

“4. There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. [Section 498-A](#) of the IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that [Section 498-A](#) is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested. “Crime in India 2012 Statistics” published by National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for the offence under [Section 498-A](#) of the IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under the Penal Code. It accounts for 4.5% of total crimes committed under different sections of Penal Code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under Section 498-A of IPC is as high as 93.6%, while the conviction rate is only 15%, which is

lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal.

5. Arrest brings humiliation, curtails freedom and cast scars forever. Lawmakers know it so also the police. There is a battle between the lawmakers and the police and it seems that police has not learnt its lesson: the lesson implicit and embodied in Cr.P.C. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

6. Law Commissions, Police Commissions and this Court in a large number of judgments emphasized the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the legislature did not find any improvement. Numbers of arrest have not decreased. Ultimately, the Parliament had to intervene and on the recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the Code of Criminal Procedure (for short "CrPC"), in the present form came to be enacted. It is interesting to note that such a recommendation was made by the Law Commission in its 152nd and 154th Report submitted as back in the year 1994. The value of the proportionality permeates the amendment relating to arrest."

6. Taking into consideration the totality of the circumstances, the nature of allegation particularly that the report has been lodged in the year 2020 whereas marriage was solemnized in the year 2011 and the nature of allegation particularly that the dispute between the husband and wife appears to be triggered because of financial issue and illicit relationship of the husband with another woman, the applicant being Class-II Gazetted Officer and it is unlikely that the applicant would in any manner be in a position to impede the investigation or temper with prosecution witness, I am inclined to protect the applicant by grant of anticipatory bail. Therefore, the application is allowed.

7. Accordingly, it is directed that in the event of arrest of the applicant in connection with the aforesaid offence, he shall be released on bail on his furnishing a personal bond in the sum of Rs.50,000/- along with one local surety for the like amount to the satisfaction of the arresting officer and the applicant shall abide by all the following terms and conditions -

- (i) that the applicant shall make himself available for interrogation by a Police Officer as and when required;
- (ii) that 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) that he shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that he shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

Certified copy as per rules.

Sd/-

(Manindra Mohan Shrivastava)

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