

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 914 of 2020**

- Rahul Sharma S/o Shri Gulab Chand Sharma Aged About 25 Years R/o Village Bagicha, Police Station And Tehsil Bagicha, District : Jashpur, Chhattisgarh **---- Appellant**

**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station Bagicha, District : Jashpur, Chhattisgarh **---- Respondent**

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| For Appellant        | : | Mr. Vivek Kumar Agrawal, Advocate. |
| For Respondent/State | : | Ms. Hamida Siddiqui, Advocate.     |

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**S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava****Order on Board****08/01/2021**

Heard.

1. This appeal has been filed by the appellant against order dated 31.08.2020 passed by the learned Special Judge (Atrocities) Jashpur, C.G., by which, the appellant's application for grant of anticipatory bail has been rejected.
2. The appellant is apprehending his arrest in connection with Crime No.105/2020 registered at police station– Bagicha, District : Jashpur (C.G.) for alleged commission of offence under Section 376 (2)(N), 313, 323 & 506 of IPC and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act of 1989').
3. The prosecutrix lodged an FIR against the present appellant alleging that the appellant entrapped her in his love since last 2 years and since then he has been sexually exploiting her and despite her insistence, finally the accused is not coming forward to marry and on false pretext of marriage, the accused sexually exploited the prosecutrix. The prosecutrix belonged to SC category.
4. Learned counsel for the appellant would argue that the contents of FIR lodged by the prosecutrix is self-speaking as the details of long standing

affair between the appellant and the prosecutrix since last over 2 years and even more only shows that time and again there were disputes, separation, reunion, live-in relationship and finally intervention of family and attempt made not to allow marriage between the appellant and the prosecutrix. He would further submit that FIR itself shows that the prosecutrix still has claimed that either marriage should be arranged between the appellant and the prosecutrix or action should be taken against the appellant. He relied upon decision of the Hon'ble Supreme Court in the case of **Maheshwar Tigga versus The State of Jharkhand, (2020) 10 SCC 108** and order passed by this Court in the cases of **Devnarayan Yadav versus State of Chhattisgarh** in **CRA No.744 of 2020** decided on **11.12.2020** and **Kuldeep Singh versus State of Chhattisgarh** in **CRA No.670 of 2020** decided on **03.12.2020**. Learned counsel for the appellant would argue that in view of law laid down by the Supreme Court in its recent judicial pronouncement in the case of **Prathvi Raj Chauhan Vs. Union of India & others, 2020(4) SCC 727**, present is a case of exceptional nature where notwithstanding bar under Section 18 of the Act of 1989, the appellant is entitled to grant of anticipatory bail.

5. On the other hand, learned State Counsel would argue that though the prosecutrix has narrated in the FIR and other statement regarding her affair with the present appellant, sum and substance of the entire allegation is that the appellant right from the beginning had been assuring the prosecutrix that their relation will be brought a logical hand but it could not be translated into action and time and again whenever occasion arose the appellant took back seat behind his family members. All these facts stated by the prosecutrix in the FIR and other statement make out a *prima facie* case that the sexual exploitation of the prosecutrix on a false pretext of marriage. He would submit that in such a situation, a *prima facie* case is made out and the bar under Section 18 the Act of 1989 would apply and the application would not be maintainable.
6. I have heard learned counsel for the parties and perused the relevant documents and information disclosed by the learned State Counsel on the basis of material contained in the case diary.
7. The FIR lodged by the prosecutrix is a detailed one and it talks of a very long standing affair between the prosecutrix and the appellant since over 2 years prior to the lodging of the FIR. The appellant and the

prosecutrix both are major. Prosecutrix is stated to be approximately 23 years of age. The FIR discloses that the appellant and the prosecutrix were having long affair and even live-in relationship and at one point of time, there was dispute between them and they separated. There are statements made in the FIR that the appellant and the prosecutrix had separated their relations but thereafter the appellant cut his veins and that was the occasion when the prosecutrix again went to see the appellant and their relationship again restarted. There are statements made in the FIR that prosecutrix and the appellant had eloped and gone to another station wherefrom they got back. It has been also stated in the FIR that at one point of time, the appellant and his family members invited the prosecutrix to resolve all the disputes involving family of the appellant as well as prosecutrix but at last, family of the appellant started offering the prosecutrix to take some money and leave the appellant and that day, the prosecutrix has occasioned to file FIR. In the FIR, the prosecutrix has stated that either the family of the appellant should accept marriage or action should be taken against them.

8. In the case of **Maheshwar Tigga (supra)**, the Supreme Court had occasion to examine whether a case is made out on the ground of false pretext of marriage with background that the parties were having long standing affair over years. It was observed that the physical relations that followed was not isolated or sporadic in nature but regular over the years. The prosecutrix has gone and resided in the house of the accused and on that basis the opinion of delay of 4 years in lodgment of the FIR at an opportune time of 7 days prior to the accused solemnising his marriage with another girl was made a basis to raise serious doubt over dispute and veracity of allegation levelled by the prosecutrix that it was on false pretext of promise of marriage with prosecutrix.

This Court granted anticipatory bail to Devnarayan Yadav in CRA No.744 of 2020 and Kuldeep Singh in CRA No.670 of 2020 in similar circumstances where the affair between the prosecutrix and the appellant had continued over years and then, when the marriage could not materialise, the FIR was lodged making allegations of sexual exploitation on false pretext of marriage. This Court also took note of the recent judicial pronouncement of the Hon'ble Supreme Court in the case of **Prathvi Raj Chauhan (supra)**. The maintainability of an application for grant of anticipatory bail on the face of bar Under Section 18 of the Act of 1989 was examined by the Hon'ble Supreme Court in a recent judicial pronouncement in the case of **Prathvi**

**Raj Chauhan (supra).** It was held as below :

“10. Concerning the applicability of provisions of Section 438 Cr.PC, it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by Section 18 and 18(A)(i) shall not apply. We have clarified this aspect while deciding the review petitions. ”

32. I would only add a caveat with the observation and emphasize that while considering any application seeking pre-arrest bail, the High Court has to balance the two interests: i.e. that the power is not so used as to convert the jurisdiction into that under Section 438 of the Criminal Procedure Code, but that it is used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR, and further also that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. I consider such stringent terms, otherwise contrary to the philosophy of bail, absolutely essential, because a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament.”

Therefore, in appropriate cases, benefit of anticipatory bail should be admitted to appellant and there is no absolute bar.

9. Considering the overall circumstances of the present case, particularly long standing affair of the appellant and the prosecutrix and that both are major and there was more than one occasion of separation and reunion and finally, lodging of the FIR only when marriage could not materialise because of non-acceptance of relationship of the appellant and the prosecutrix by the family of the appellant and appellant took back seat, in the considered opinion of this Court, present is a case of exceptional nature for admitting the appellant to the benefit of anticipatory bail despite bar created under Section 18 of the Act of 1989.
10. In view of above, order passed by the Court below rejecting application for grant of anticipatory bail is set aside and application for grant of anticipatory bail is allowed.
11. It is directed that in the event of arrest, the appellant shall be released on bail, on his furnishing a personal bond in the sum of Rs.25,000/- with two local sureties for the like amount to the satisfaction of the arresting officer, with following further conditions that:-
  - a) the appellant shall make himself available for interrogation by the police officer as and when required;

b) the appellant 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;

Certified copy as per rules.

**Sd/-**  
**(Manindra Mohan Shrivastava)**  
Judge

Ravi