

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 1757 of 2020**

- Ajay Kaushik S/o Lalit Kumar Kaushik, Aged About 35 Years R/o 12/11, Priyadarshani Parisar, Supela, Bhilai, Tehsil Civil And Revenue, District Durg, Chhattisgarh.

---- Applicant**Versus**

- State Of Chhattisgarh Through District Magistrate, Durg District Durg, Chhattisgarh.

---- Respondent

For Applicant : Shri Shri Jaydeep Singh Yadav and
Shri Sushobhit Singh, Advocates.

For Respondent/State : Shri Sushil Sahu, P.L. and Shri
H.S.Ahluwalia, Dy. A.G.

Hon'ble Shri Justice Arvind Singh Chandel**Order On Board****19/01/2021**

1. The applicant has preferred the second bail application under Section 438 of Cr.P.C. for apprehending arrest in connection with Crime No. 419/2020 registered at Police Station Supela, Bhilai, District – Durg, (C.G.) for the offence punishable under Sections 377, 498-A r/w Section 34 of the Indian Penal Code.
2. Vide order dated 28.9.2020, first bail application of the applicant passed in MCRCA No. 1086/2020 was dismissed as withdrawn with liberty to file regular bail application before the trial Court in the event of surrender of the applicant.

3. Earlier, applicant had preferred an application for grant of anticipatory bail before Additional Sessions Judge, (FTC), District Durg, (C.G.) which was rejected vide order dated 27.7.2020. Thereafter, applicant has preferred first anticipatory bail application before this Court challenging the bail rejection order dated 27.7.2020 of the trial Court which was dismissed as withdrawn vide order dated 28.9.2020 passed in MCRCA No. 1086/2020 with liberty to file regular bail application before trial Court in the event of surrender of the applicant.
4. According to the case of the prosecution, present applicant is the husband of the complainant. Marriage between applicant and complainant was solemnized on 21.11.2019 at Dhamtari. A written complaint has been lodged by the complainant on 28.6.2020 wherein it has been alleged that after her marriage, applicant and other co-accused persons started harassing her on account of demand of dowry. On the basis of the written complaint made by the complainant, initially, offence under Section 498-A, 34 of the I.P.C. was registered. During course of investigation, statement of complainant under Section 164 of Cr.P.C. was recorded and on the basis of her statement, offence under Section 377 of the I.P.C. was added.
5. Learned Counsel appearing for the applicant submit that applicant is innocent and has been falsely implicated in the present case. They further submit that complainant, in her written complaint as well as in her statement recorded under Section 161 of Cr.P.C., has not stated anything regarding the alleged act committed under Section 377 of the I.P.C. On 11.8.2020, for the first time complainant in her statement

recorded under Section 164 of Cr.P.C., has stated regarding the alleged act committed under Section 377 of the I.P.C. They further submit that the entire allegations leveled by the complainant against applicant is false, fabricated and afterthought only to harass the applicant. Though, at the time of withdrawal of first anticipatory bail application before this Court, offence under Section 377 of the I.P.C. has already been added but the said fact was not known to the applicant nor during the course of argument, State Counsel pointed out this fact. After withdrawal of the first bail application, when applicant came to know about the addition of offence under Section 377 of the I.P.C., he preferred second anticipatory bail application as no offence under the said Act is made out against him. Therefore, it is prayed that applicant may be granted anticipatory bail.

6. Learned Counsel appearing for the State opposes the anticipatory bail application. They further submit that at the time of withdrawal of the first bail application, offence under Section 377 of the I.P.C. has already been added but the said fact was not pointed out by the applicant. It is further submitted that applicant himself has withdrawn the first bail application with liberty to file regular bail application before the trial Court after surrendering himself. Mere addition of Section 377 of I.P.C. against applicant is not an appropriate ground to entertain his second bail application. Thus, the present bail application should be rejected.

7. I have heard learned Counsel appearing for the parties and perused the material available.

8. Taking into consideration the submissions put-forth on behalf of the parties, considering the facts and circumstances of the case and evidence collected by the prosecution it appears that the written complaint dated 28.6.2020 and statement of the complainant recorded under Section 161 of Cr.P.C., complainant did not disclose anything regarding unnatural intercourse committed by the applicant. Firstly, the said fact was disclosed by the complainant in her statement recorded under Section 164 of Cr.P.C. and on the basis of the said, offence under Section 377 of the I.P.C. has been added. For the sake of argument, if offence under Section 377 of I.P.C. is not made out, then also, the first bail application relating to offence under Section 498-A of the I.P.C. has already been dismissed as withdrawn by the applicant with liberty to file regular bail application before the trial Court after surrendering himself. Thus, in my considered view, mere addition of Section 377 of the I.P.C. is not an appropriate ground to grant bail to the applicant. Looking to the above, the present bail application is liable to be and is hereby dismissed.

Sd/-
(Arvind Singh Chandel)
Judge