

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.Cr.C. No. 9129 of 2020

- Ashish Gupta, S/o Shri Hanumandas Gupta, aged about 32 years, R/o Pandatarai, Tehsil Pandriya, District Kabeerdham, C.G.

---- Applicant

Versus

- State of Chhattisgarh Through: The SHO, P.S. Pandatarai, District Kabeerdham (C.G.)

---- State/Non-applicant

For Applicant : Shri Kishore Bhaduri and Shri Sabyasachi Bhaduri, Advocates

For Non-Applicant/State : Shri C.B. Kesharwani, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya, J

Order on Board

21.01.2021

1. The applicant has preferred this first bail application under Section 439 of Cr.P.C. as he is in jail since 11.11.2020 in connection with Crime No. 36/2018 registered in Police Station- Pandatarai, Kabeerdham (CG) for the offence punishable under Sections 323, 376 & 506 of IPC.
2. As per prosecution case, F.I.R. was lodged by the prosecutrix on 07.03.2018 alleging that the present applicant threatened her on the point of knife in order to have sexual intercourse with her. It has further been alleged that the applicant threatened her to circulate an alleged MMS of the prosecutrix, after her marriage, in order to extract sexual favours from her on many occasions.
3. Learned counsel for the applicant submits that the prosecutrix is major girl of 27 years. He submits that it was mentioned in the F.I.R. that the applicant and prosecutrix were having physical relations since the year 2012 to year 2018, but neither the F.I.R. was lodged by the prosecutrix, nor any complaint made to any person regarding offence committed by the applicant prior to lodging of the present F.I.R. He also submits that the prosecutrix visited number of places alongwith the applicant and stayed in other places and she was continuously having relations with the applicant. He submits that after

the marriage of the prosecutrix which was solemnized on 04.02.2018 with one Hemendra Patel, she lodged the F.I.R. on 07.03.2018. He also submits that prior to the marriage of the prosecutrix and after the year 2012, she visited number of places with the applicant and both were having sexual relations with each other. He further submits that when the present applicant made complaint against Pushpendra Patel (brother of the prosecutrix) before the police on 25.04.2017, then the prosecutrix, on the pressure of her brother, lodged the F.I.R. against the applicant. He further submits that looking to the Annexure-A/6, there were WhatsApp-conversations on mobile-phone No. +917999323121 between the applicant and the prosecutrix for a long time, the entire conversation shows that both applicant and prosecutrix were having affair. Therefore, looking to the conduct of the prosecutrix, the applicant be released on bail.

4. On the other hand, learned counsel for the State opposes the bail application and submits that on the point of knife, the present applicant made sexual relations with the prosecutrix since the year 2012 to 2018. He also submits that the anticipatory bail of the applicant was rejected by the coordinate bench of this Court vide M.Cr.C.(A) No. 604 of 2020 on 26.06.2020 giving direction to the applicant that if he surrenders himself and moves a regular bail application, the same shall be considered on the same day. Then, the applicant had surrendered himself
5. Having heard learned counsel for the parties, having regard to the facts and circumstances of the case, considering the fact that there were continuously physical relations between the applicant and the prosecutrix from 18th March 2012 to 05th March 2018, the prosecutrix is major lady at the time of incident and now she is 27 years of age, her birth year was mentioned in F.I.R. as 1994, after six years of long delay she lodged the F.I.R. and she was married with one Hemant Patel on 04.02.2018, and that the applicant is in jail since 11.11.2020, charge-sheet has already been filed, conclusion of the

trial is likely to take some time, there is no apprehension of the applicant tampering with the evidence or absconding, without expressing any opinion on merits of the case, the bail application is allowed.

6. It is directed that in the event of applicant executing a personal bond for a sum of Rs.50,000/- with two sureties of Rs.25,000/- each to the satisfaction of the concerned trial Court, he shall be released on bail on the following conditions:-

- i. 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 fact to the Court.
- ii. he shall not act in any manner which will be prejudicial to fair and expeditious trial, and
- iii. he shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.
- iv. he shall not involve himself in any offence of similar nature in future or else this order granting bail to the applicant shall automatically stand cancelled without further reference to the Bench.

Sd/-

(Gautam Chourdiya)
Judge