

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 17th OF MARCH, 2023

MISC. CRIMINAL CASE No. 11704 of 2023

BETWEEN:-

UMANG SINGH SHINGAR S/O SHRI DAYARAM
SHINAGAR, AGED ABOUT 48 YEARS, OCCUPATION:
M.L.A. (GANDHWANI) DHAR R/O BEHIND
P.W.D.VIHAYAK NIWAS DISTRICT DHAR (MADHYA
PRADESH)

.....APPLICANT

(BY SHRI MANISH DATT - SENIOR ADVOCATE WITH SHRI MANISH
KUMAR TIWARI)

AND

THE STATE OF MADHYA PRADESH THROUGH POLICE
STATION NAOGAON DISTRICT-DHAR (MADHYA
PRADESH)

.....RESPONDENTS

(BY SHRI ALOK AGNIHOTRI - DY.G.A.)
(SHRI VIVEK DALAL - ADVOCATE WITH SHRI YASHPAL AHLUWALIA -
ADVOCATE FOR OBJECTOR)

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*This application coming on for admission this day, the court passed the
following:*

ORDER

Registry has raised an objection with regard to territorial objection but that objection is ignored in pursuance to the order passed by the Registry on 01/11/2022 modifying the earlier order dated 23/10/2021 assigning jurisdiction to this Court to hear the cases related to sitting /formal legislators (M.Ps and MLAs) that too in pursuance to the order passed by Hon'ble Supreme Court of India on 16/09/2020 in Writ Petition (civil) No.699/2016 (Ashwani Kumar

Upadhyay and others Vs. Union of India and others).

This is the first application filed under Section 438 of the Code of Criminal Procedure on behalf of the applicant for grant of anticipatory bail.

The applicant is apprehending his arrest in connection with Crime No.540/2022 registered at Police Station Naogaon District Dhar for the offence punishable under Sections 294, 323, 376(2)(N), 377, 498-A and 506 of IPC.

Counsel for the applicant submits that applicant and prosecutrix are known to each other and they have been in relation since long. From the contents of FIR, it is clear that prosecutrix has admitted the fact that applicant is her husband and she met with him in a public gathering, thereafter they came near to each other.

It is alleged that applicant on the pretext of marriage has made physical with her. As per FIR, initially applicant has avoided to get married to her but finally on 16/04/2022 they entered into the marriage at Bhopal. It is alleged that immediately after marriage, attitude of applicant got changed towards the prosecutrix. He started misbehaving with her and despite her objection and refusal, used to commit rape. Not only this, but applicant has also committed unnatural sex with the prosecutrix. It is alleged that on 27/10/2022, applicant committed *marpeet* with her and forcefully developed physical relation. It is submitted that applicant has been harassing the prosecutrix continuously but she did not lodge the report to the police because it would cause damage to their image in the society but ultimately on 20/11/2022 she lodged report.

Shri Datt further contends that considering the contents of FIR when prosecutrix herself is admitting that applicant is her husband and they entered into the marriage, developed physical relation, does not fall within the definition of rape. He submits that prosecutrix is aged about 38 years was in love affair

with applicant who is political leader and member of legislative assembly. At the time of developing relationship with the present applicant, prosecutrix was married and despite that she developed physical relation with him. He submits that allegation with regard to unnatural sex and harassment is nothing but a false allegation because prosecutrix is basically demanding share in the property of the present applicant. He submits that several complaints have also been made against the prosecutrix. He has also filed some documents to substantiate that the character of the prosecutrix is not good. He has informed this Court that applicant has filed a suit on 14/11/2022 against prosecutrix in the Court of Civil Judge (Senior Division) Gurgaon claiming damages which is still pending. He submits that sole object of the prosecutrix is to extract money from the applicant because she is under heavy loan and asking money from the applicant to repay the same. He further submits that the Supreme Court in **Prashant Bharti Vs. State (NCT of Delhi)** reported in (2013) 9 SCC 293 has observed that when physical relation is developed with an assurance of marriage by a married person then that allegation cannot be relied upon and considered to be true. He submits that in the present case, both the persons are married and knowing the fact that marriage between them is not possible made physical relation.

Per contra, counsel for State has vehemently opposed the submissions and prayed for rejection of this application. He submits that though the applicant is a political person but considering the allegation made against him, he is not entitled to be released on bail. He submits that not only the allegation of developing physical relation is against him but allegation of commission of unnatural sex is also there, which is a non-bailable offence. He strenuously

argued that complaint made by servant of prosecutrix against her is a false complaint because that servant was engaged by the present applicant in his house and at his instance, she made false complaint against the prosecutrix. He submits that investigation is still going on and at this stage interrogation of present applicant is required, therefore, benefit of Section 438 of Cr.P.C. cannot be granted to him.

Counsel for objector has supported the stand taken by counsel for State and urged with some amount of vehemence that as per Section 496 of IPC present applicant can not enter into the marriage with the prosecutrix because he was already married. He submits that developing physical relation by a married person with a lady knowing the fact that he is not her husband is also a rape as per clause "Fourthly" of Section 375 of IPC. To buttress his submission, he has placed reliance upon a judgment reported in (2008) 8 SCC 531 (**Bhupinder Singh Vs. Union Territory of Chandigarh**). He has also relied upon a decision of Chhattisgarh High Court reported in 2021 SCC online Chh 3964 (**Diljeep Pandey and others Vs. State of Chhattisgarh**) in which the Court has observed that a wife can initiate proceeding against her husband of unnatural sex under Section 377 of IPC. He has also submitted that consent of wife is immaterial in respect of the offence of unnatural sex. He submits that under such a circumstance, when allegation of Section 376 of IPC is against the present applicant, bail application under Section 438 of Cr.P.C can not be considered. He submits that it is a primary stage of investigation; police has to interrogate the applicant and collect the material evidence, therefore, bail application cannot be considered and it deserves to be dismissed.

Heard counsel for parties and perused the case diary.

Perusal of case diary, nature of allegations and submissions of counsel

for both the parties, clearly reveal that at the time of developing physical relation prosecutrix was married. She is mentally sound, educated and is also in politics. Both the parties have filed material against each other to substantiate that they are not of good character. The legal position and the factual aspect of the case *prima facie* indicates that it is not a case of any forceful compulsion by the applicant to the prosecutrix to surrender before him and develop physical relation.

Considering the present scenario in which tendency has been developed to make allegation of rape and also of unnatural sex with certain motives against the husband or a person with whom girl has been in love affair, this Court is not expressing any opinion about character of any of the parties i.e applicant and prosecutrix.

Accordingly, in view of overall facts and circumstances, this Courts intends to enlarge the applicant on anticipatory bail. Therefore, without commenting anything on the merits of the case, this application is **allowed**.

It is directed that in the event of arrest, the applicant be released on bail upon his furnishing a bail bond in the sum of **Rs.2,00,000/- (Rupees Two Lac)** with one solvent surety of the like amount to the satisfaction of Station House Officer/Arresting Officer of the Police Station concerned.

This order shall remain operative subject to compliance of following conditions by the applicant:-

1. The applicant will comply with all the terms and conditions of the bond executed by him;
2. The applicant will cooperate in the investigation/trial, as the case may be;

3. The applicant will not indulge himself in extending inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to the Police Officer, as the case may be;

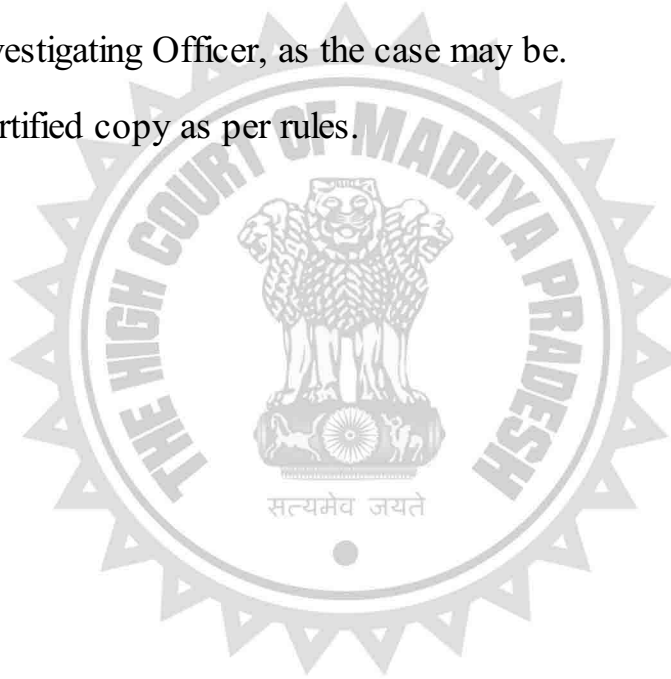
4. The applicant shall not commit an offence similar to the offence of which he is accused;

5. The applicant will not seek unnecessary adjournments during the trial; and

6. The applicant will not leave India without prior permission of the trial Court/Investigating Officer, as the case may be.

Certified copy as per rules.

sushma



**(SANJAY DWIVEDI)
JUDGE**