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HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C. No. 7965 of 2017**

1. Virendra Kumar Joshi S/o Poonamchand Joshi, Aged About 25 Years Caste Satnami, Occupation Student, R/o Village Bhesamuda, Police Station Nawagarh, Tahsil Nawagarh, District Bemetara Chhattisgarh.
2. Nagendra Joshi, S/o Poonamchand, Aged About 22 Years Caste Satnami, Occupation Student, R/o Village Bhesamuda, Police Station Nawagarh, Tahsil Nawagarh, District Bemetara Chhattisgarh, District : Bemetara, Chhattisgarh.

---- Applicants**Versus**

State Of Chhattisgarh Through Station House Officer, Police Station Nawagarh, Tahsil Nawagarh, District Bemetara Chhattisgarh.

---- Respondent**And****M.Cr.C.(A) No. 1143 Of 2017**

Vinay Kumar Joshi S/o Poonamchand Joshi Aged About 30 Years Caste Satnami, Occupation Farmer, R/o Village Bhesamuda, Police Station Nawagarh, Tehsil Nawagarh District Bemetara Chhattisgarh.

---- Applicant**Vs**

State Of Chhattisgarh Through Station House Officer, Police Station Nawagarh, Tahsil Nawagarh, District Bemetara Chhattisgarh.

---- Respondent

For the Applicants : Shri Rajeev Shrivastava, Advocate.
For the Respondent/State : Shri Vinod Tekam, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****28.02.2018**

1. Both these applications are decided by a common order as they arise from the similar matter. These are the first bail applications of the applicants filed under Sections 439 and 438 of the Code of Criminal Procedure, 1973 for grant of regular bail and anticipatory bail to the applicants in connection with Crime No.104 of 2017, registered at Police Station Nawagarh, Tahsil –

Nawagarh, District – Bemetara, Chhattisgarh for the offence punishable under Sections 376 and 498-A/ 34 of the Indian Penal Code, in which the applicant in M.Cr.C. No. 7965 of 2017 have been arrested and the applicant in M.Cr.C.(A) No. 1143 of 2017 is apprehending arrest.

2. Learned counsel for the applicants submits that applicants – Virendra Kumar Joshi and Nagendra Joshi in M.Cr.C. No. 7965 of 2017 are in jail since 24.5.2017 and they have been falsely implicated in this case. The prosecutrix is sister-in-law of these applicants being wife of the brother of these applicants. The real case is that there is some family dispute between the prosecutrix and her husband because of which, she left the house of the applicants who were living jointly on 8.5.2017 and she took shelter in the house of witness – Sushila and thereafter, she left for her paternal home on the next day. A concocted report has been filed by the prosecutrix and on that basis FIR was lodged. Hence, it is prayed that the applicants in M.Cr.C. No. 7965 of 2017 be benefited with grant of regular bail.

3. Learned counsel for the applicant submits that the applicant in M.Cr.C.(A) No. 1143 of 2017 has been falsely implicated in this case only on account of family dispute with his wife who wanted him to live separately with her. As per the allegations of the prosecution case, no case is made out against the applicant. Hence, it is prayed that the applicant be benefited with grant of anticipatory bail.

4. On the other hand, learned counsel for the State opposes the bail applications and the arguments submitted in this respect. It is submitted that

according to the written complaint and the statement under Section 164 of the Cr.P.C. the prosecutrix had made direct allegation against the applicants regarding the offence of committing rape against the applicants in M.Cr.C. No.7965 of 2017 applicant – Vinay Kumar Joshi in M.Cr.C.(A) No. 1143 of 2017 is equally responsible. Hence, for these reasons, none of the applicants deserve to be enlarged on regular or anticipatory bail.

5. Heard counsel for both the parties and perused the case diary.

6. The case is that the marriage of the prosecutrix and applicant – Vinay Kumar Joshi was solemnized on 6.5.2011. Out of this wedlock, they had one daughter aged about 3 years. It is alleged that the applicants in both the cases and the co-accused persons used to torture and treat the prosecutrix with cruelty for demand of dowry and other co-accused persons used to compel the prosecutrix to have physical relationship with the applicants in M.Cr.C. No. 7965 of 2017 because of which, on 6.5.2017 the applicants in M.Cr.C. No. 7965 of 2017 raped her and the similar incident had taken place on 8.5.2017 and when the applicants in M.Cr.C. No. 7965 of 2017 were engaged in rape with the prosecutrix, her husband came on the spot and getting enraged, he turned her out of his house alongwith her daughter. It is stated that the prosecutrix found shelter in the house of Sushila, the witness in this case and thereafter, the case has been registered by filing charge-sheet on 15.5.2017.

7. Considered the entire material present in the case-diary, the probability and the reliability of the case has to be established by the

prosecution before the trial Court, for the present, taking into consideration the totality of the case, I am of this view that applicants – Virendra Kumar Joshi and Nagendra Joshi in M.Cr.C. No. 7965 of 2017 deserve to be enlarged on regular bail and applicant – Vinay Kumar Joshi M.Cr.C.(A) No.1143 of 2017 deserves to be enlarged on anticipatory bail.

8. Accordingly, the bail applications filed under Sections 439 and 438 of the Cr.P.C. are allowed.

9. It is directed that applicants – Virendra Kumar Joshi and Nagendra Joshi in M.Cr.C. No. 7965 of 2017 shall be released on bail on each of them furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned trial Court, for their appearance as and when directed.

10. It is directed that in the event of arrest of applicant – Vinay Kumar Joshi in connection with the aforesaid offence, he shall be released on bail by the Officer arresting him on executing a personal bond in sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Investigating Officer. The applicant shall also abide by the following conditions:

- '(i) that the applicant shall make himself available for interrogation before the Investigating Officer as and when required;
- (ii) that the applicant 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 them from disclosing

such facts to the Court or to any police officer;

- (iii) that the applicant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that the applicant shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.'

Sd/-

(Rajendra Chandra Singh Samant)
Judge