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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

ON THE 1st OF FEBRUARY, 2024

MISC. CRIMINAL CASE No. 3582 of 2024

BETWEEN:-

**BALVIR SINGH S/O LT. BISORAM, AGED ABOUT 40
YEARS, OCCUPATION: PVT. SERVICE REHLU TEH.
SHAHPURA, DIST.KANGRA, HIMACHAL PRADESH
(HIMACHAL PRADESH)**

.....APPLICANT

(SHRI VIVEK SHARAN, LEARNED COUNSEL FOR THE PETITIONER .

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THROUGH RAOJI BAZAR (MADHYA PRADESH)**

.....RESPONDENTS

***(SHRI AJAY RAJ GUPTA APPEARING ON BEHALF OF ADVOCATE
GENERAL & SHRI RAGHVENDRA SINGH RAGHUVANSHI, LEARNED
COUNSEL FOR THE RESPONDENT [OBJ].***

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

ORDER

Heard and perused the case diary.

1. This is **first** bail application filed by the applicant under Section 438 of the Cr.P.C. for grant of anticipatory bail who is apprehending his arrest in relating to F.I.R. No.711/2023 dated (not mentioned), registered at Police Station-Raoji Bajar District-Indore for the offence punishable under Section 376, 376(2)(n), 323, 506, 384 of IPC, 1860.

2. Applicant is apprehending her arrest in the aforesaid offence, has knocked the portal of this Court for grant of anticipatory bail.

3. As per prosecution case, the complainant namely Madhu Chouhan and her husband Ajay reached to the police station and filed a written complainant against the applicant by submitting that the applicant and the complainant known to them through social media and became friends, they started chatting with each other and exchanged their phone numbers. The applicant intimated to the complainant that on 26.07.2022, he is coming to Indore but he is not having amount and taken Rs.15000/- from the complainant on a promise to return her after being reached to Indore. He asked her to take the amount, therefore the complainant called him to the house of her friend where the applicant given her some toxic substance in water and committed rape upon her against her will and taken some photographs also and threatened her not to tell about the incident to anyone otherwise he will viral the photographs. Thereafter, the applicant black mailed her continuously, demanded amount from her, he called her to Mumbai and repeatedly committed rape upon her at various placed i.e. Jabalpur, Mumbai and Goa also on the pretest of viral the photographs. She has not raised to anyone alarm due to damage of reputation in society. Hence, the police has lodged the FIR against the applicant.

4. Learned counsel for the applicant submits that applicant is innocent and has falsely been implicated in the present case. The prosecutrix is a major and married lady and she is consenting party. The complainant alongwith her son has used to travel with the applicant from Indore to Jabalpur and stayed in the same hotel, the complainant and the applicant was well acquainted with each other therefore, she herself had gone to Goa to meet and hand over the amount of Rs.2/- lacs to the applicant. It is further submitted that the applicant himself has sent Rs.14/- lacs to the complainant and there is nothing on record to show

that the applicant has committed any act against the complainant against her will. It is also submitted that the complainant herself has called the applicant to her friend's house because they were friends. The dispute between both the parties are only the financial transaction due to which the applicant has been implicated in the present case. The FIR has been lodged belated and no plausible explanation has been given for the said delay. The applicant is a businessman and indulged in the business, he is ready to abide all the conditions as may be imposed by this Court. Therefore, he may be enlarged on anticipatory bail.

5. To bolster his contentions, counsel for the applicant place reliance over the judgment of co-ordinate Bench of this Court (Gwalior Bench) passed in the case of **Balveer Singh Bundela vs. State of Madhya Pradesh (MCRC No.5621/2020)** decided on 12.05.2020, whereby the Co-ordinate bench has considered the application under Section 438 of Cr.P.C. and granted bail to the applicant therein.

6. Counsel for the State has opposed the prayer for bail by submitting that the applicant has committed rape upon the prosecutrix and taken the amount from the prosecutrix by black mailing her.

7. On the other hand, counsel for the objector has submitted that this is case for anticipatory bail, the applicant has committed repeated rape upon the prosecutrix and by black mailing her, taken huge amount from the complainant threatening her that he will viral the photographs. It is further submitted that even after such incident, the applicant is regularly threatening the complainant not to object before the Court and in that conditions, the applicant may not be enlarged on bail. Hence, prays for dismissal of the application.

8. I have heard the counsel for the parties and perused the record.

9. From the face of record, it clear that the applicant and the complainant

got acquainted through social media. So far as the contention of counsel for the applicant regarding the consent is concerned, the matter is at very initial stage and if that be so, the applicant has taken the amount from the complainant and partly repaid also, but at this state, it can also not be assumed that the applicant has not black mailed the complainant because the transactions are clearly reflecting some financial transactions.

10. Further, the Hon'ble Apex Court in the case of **Jai Prakash Singh vs. State of Bihar and others [2012 (4) SCC 379]** while canceling the anticipatory bail of the applicant therein so granted concerned High Court, has clearly observed that:-

"13.....The anticipatory bail being an extraordinary privilege should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after proper application of mind to decide whether it is a fit case for grant of anticipatory bail.

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21.....The court may not exercise its discretion in derogation of established principles of law, rather it has to be in strict adherence to them. Discretion has to be guided by law; duly governed by rule and cannot be arbitrary, fanciful or vague. The court must not yield to spasmodic sentiment to unregulated benevolence. The order dehors the grounds provided in Section 438 Cr.P.C. itself suffers from non- application of mind and therefore, cannot be sustained in the eyes of law."

11. So far as the authority placed by counsel for the applicant in the case

of **Balveer Singh Bundela (supra)** is concerned, it is clear that in the said case the applicant solemnized marriage with complainant/prosecutrix, hence, anticipatory bail was granted, but the facts of the present case are different, hence, no benefit can be granted to the applicant, therefore, the same is distinguished.

12. In view of the aforesaid facts and circumstances of the case and the settled proposition of law laid down by Ho'ble Apex Court in the case of **Jai Prakash Singh (supra)**, no case for anticipatory bail is made out. Hence, the application is liable to be and is hereby rejected.

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**(PREM NARAYAN SINGH)
JUDGE**