

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Order Reserved on : 14/02/2023**

**Order delivered on :28/02/2023**

**MCRCA No. 1636 of 2022**

- Rajendra Devrao Uchake S/o Devrao Uchake Aged About 50 Years R/o Plot No. 286/b, Near Nagar Palika Water Tank, Killa Road Mahal, Police Station - Kotwali, Nagpur, Maharastra. **---- Applicant**

**Versus**

- State of Chhattisgarh, Through Police Station - City Kotwali, Rajnandgaon, District – Rajnandgaon, Chhattisgarh.

**---- Non-Applicant**

---

For Applicant	:	Shri Kaushal Trivedi, Shri Rajnish Singh Baghel and Shri Aditya Trivedi, Advocates
For Non-Applicant/State :		Shri Avinash K. Mishra, Government Advocate
For Objector	:	Dr. Shailesh Ahuja, Smt. Geeta Shukla, Shri Palash Rajani and Shri Pankaj Bhaskar, Advocates

---

**Hon'ble Shri Justice Rakesh Mohan Pandey**

**Order on Board**

Heard.

- 1) The applicant has preferred this application under Section 438 of Code of Criminal Procedure, 1973 for grant of anticipatory bail as he apprehends his arrest in connection with Crime No.921/2022 for the offence punishable under Sections 509-B, 506-B of the IPC and Section 67-A of the IT Act, registered at Police Station- City Kotwali, District – Rajnandgaon, Chhattisgarh.

- 2) Case of the prosecution, in brief, is that the present applicant with intent to harass or cause annoyance or mental agony to the complainant sent obscene, lewd, lascivious, filthy or indecent messages through telecommunication device i.e. mobile phone. Thereafter, on 02.11.2022, the victim/complainant lodged a report against the present applicant making allegation that he sent obscene messages and video clips through his registered mobile number to the complainant. In some of the video clips he sent his own video clips showing himself masturbating. It is also stated by the complainant that the applicant is her maternal uncle in relation. It is further alleged that the complainant was threatened for life, if she would make any complaint against him. On such complaint, police registered offence for the aforesaid sections on 02.11.2022, whereas, incident had taken place on 17.06.2022.
- 3) Learned counsel for the applicant would submit that though the applicant is maternal uncle of the complainant but in Maharashtra, marriage between maternal uncle and the niece is permissible. He would further submit that he was induced and seduced by the complainant to send such messages and video clips. On the basis of those video clips, husband of the complainant and complainant, both had started blackmailing the applicant and they demanded Rs. 70 lacs. The present applicant informed the police, & they were trapped by the police alongwith Rs. 35 lacs. Thereafter applicant lodged FIR against the complainant and husband of the complainant on 09.07.2022 for the offence punishable under Section 384/34 of the IPC. He would further submit that as a counter blast FIR has been lodged against the present applicant.

- 4) On the other hand, learned State counsel would submit that the present applicant is maternal uncle of the complainant and obscene messages were sent by him using telecommunication device which is a heinous offence. He would further submit that as the applicant had already given a sum of Rs. 35 lacs to the complainant party, which establishes that he has committed some illegal act.
- 5) Learned counsel for the objector would invite attention of this Court to the video clips and Whatsapp messages sent by the applicant to the complainant, and would submit that the applicant is maternal uncle of the victim and he has committed such heinous offence, therefore, he is not entitled for grant of anticipatory bail.
- 6) I have heard the counsel for the parties and perused the case diary.
- 7) From the case diary, it appears that the present applicant is maternal uncle of the complainant. The complainant is married woman and she is residing in Rajnandgaon along with her husband. It is not in dispute that some objectionable messages and video clips containing obscene, lewd, lascivious, filthy or indecent material were transmitted by the present applicant, electronically by using Whatsapp, having knowledge that it would harass or cause annoyance or mental agony to the complainant, which is evident from Whatsapp Chat filed as Annexure-05 by the complainant along with her objection; the objection of the complainant depicts that this kind of material should not be sent by a maternal uncle to his niece.
- 8) Section 509 B of the Indian Penal Code reads as under:-

**509B. Sexual harassment by electronic mode.--** Whoever, by means of telecommunication device or by any other

electronic mode including internet, makes creates, solicits or initiates the transmission of any comment, request, suggestion, proposal, image or other communication, which is obscene, lewd, lascivious, filthy or indecent with intent to harass or cause or having knowledge that it would harass or cause annoyance or mental agony to a woman shall be punished with rigorous imprisonment for a term which shall not be less than six months but may extend to two years and shall also be liable to fine."

- 9) Section 67A of the Information Technology Act, 2000 reads as under:-

**"67A. Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form.** -Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees."

- 10) After going through the language used in the above cited Sections of the Acts, which go to show that the aforesaid offences are non-bailable. It is apparent from the case diary that obscene, lewd, lascivious, filthy or indecent messages were sent by the present applicant to the complainant, thereafter, FIR was registered against the present applicant; further, registration of FIR against husband of the complainant fortifies the allegations made by the complainant against the present applicant.
- 11) Considering the allegations made in the FIR against the present applicant; material available on the case diary and in the objection filed by the complainant, I am not inclined to

allow this bail application. Accordingly, the instant bail application is hereby dismissed at the motion stage itself.

12) Observations made hereinabove are only for the purpose of deciding this bail application, the learned trial Court shall decide the case on its own merits.

Sd/-  
**(Rakesh Mohan Pandey)**  
**Judge**

Nadim