

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 5827 of 2015

- Naihar Sai son of Jhagru Sai Aged About 55 Years Caste Lohar resident of Vill. Basen, Thana Kansabel, Tahsil Kansabel, Civil and Rev. Distt. Jashpur, Distt. Jashpur Chhattisgarh. --- **Petitioner**

Versus

- State Of Chhattisgarh Through P.S. Kansabel, Distt. Jashpur Chhattisgarh. --- **Respondent**

For the applicant	:	Mr. Sanjay Agrawal, Advocate
For the Respondent	:	Mr. S.R.J. Jaiswal, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

05.11.2015

1. This is an application filed under Section 439 of the Code of Criminal Procedure seeking grant of regular bail to the applicant in connection with Crime No. 127 of 2015 registered at P.S. Kansabel, Distt. Jashpur (C.G) for the offence punishable under Sections 376 IPC.
2. As per the prosecution case, a report was lodged on 09.07.2015 alleging that on 06.07.2015 when the prosecutrix was grazing cattle, she went inside the forest to trace the goat and the applicant also accompanied her and thereafter he committed rape on her in forest.
3. Learned counsel for the applicant submits that it is a case of consent and the statement under Section 161 Cr.P.C. , would show that she was a consenting party and even in the statement under Section 164 Cr.P.C., the fact that if she is alleged to be mentally retarded has not been questioned by the Court which is required as according to section 118 of the Evidence Act this fact has to be established that whether the prosecutrix was incompetent to testify and or was mentally retarded. This fact has not been proved and therefore, taking into the statement u/s 164, it can be assumed that she was a consenting party.

4. Per contra, learned State Counsel opposes the bail application.
5. I have gone through the statement of the prosecutrix wherein she has stated that she went alongwith the applicant and thereafter, the applicant committed sexual intercourse in the forest and she came back and did not report it and the mother admittedly reported the incident after two days.
6. Taking into statement of the prosecutrix under Section 164 Cr.P.C., wherein the question of mental retardness is absent, this Court is inclined to release the applicant on bail. Accordingly, this application is allowed.
7. The applicant is directed to be released on bail on his executing a personal bond in sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned trial Court . He is directed to appear before the said Court on each and every date given by the said Court.
8. C.c. as per rules.

**Sd/-
GOUTAM BHADURI
JUDGE**