

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.CR.C. No. 3455 of 2015

1. Meenaram Lodhi, S/o. Late Rewaram Lodhi, aged about 43 years,
2. Girdhari Ram, S/o. Late Rewaram Lodhi, aged about 40 years,

Both are resident of Village - Parasbod, P.S. - Saja, District -
Bemetara (C.G.)

---- Applicants

Versus

1. State Of Chhattisgarh, Through : the Station House Officer, Police
Station Saja, District – Bemetara, Chhattisgarh.
2. Smt. Taran Bai, W/o. Baratiram Lodhi, aged about 40 years, R/o.
Parasbod, P.S.- Saja, District – Bemetara (C.G.)

---- Respondents

For Applicants	:	Ms. Sharmila Singhai, Advocate
For Respondent No.1/State	:	Mr. Arvind Shukla, Panel Lawyer
For Respondent No.2	:	Mr. P.R. Patankar, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

27/10/2015

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicants who have been arrested in connection with Complaint Case No. 302/2014, pending before Judicial Magistrate First Class, Saja, District – Bemetara (C.G.), Police – Station Saja, for the offence punishable under Section 376 (2) & 452 of Indian Penal Code.

2. Brief facts of the case are that, a complaint case was filed by the respondent No.2, Smt. Taran Bai, who is related to the applicants as sister-in-law. A complaint for registration of offence under Section 376 (2), 346, 354, 420, 452, 465, 468, 509, 415 & 418 of I.P.C. was filed by the respondent No.2. The complaint alleged that on 24.08.2012 at about 12.00- 1.00 AM, when she was sleeping in her house at that time, the applicants entered in her house and committed sexual intercourse with her. Immediately after the incident, FIR was lodged before the Police Station, but the police authorities did not took any action on her report. Consequently, a complaint case was filed. Subsequently on the complaint case having been filed, the Judicial Magistrate First Class on 10.07.2014 registered the offence under Section 376 (2) and 452 of I.P.C. against the applicants. While the complaint against three other accused persons was dismissed.
3. In the instant case, this Court vide order dated 23.04.2015 had called for the reports from the Judicial Magistrate First Class as to whether the closer report was made in respect of FIR lodged by the complainant. The said report has been submitted before the Court. Perusal of the report shows that S.D.O. (Police) on behalf of S.P. Bemetara submitted a report on 24.06.2015 about the khariji report was filed before the Chief Judicial Magistrate, Bemetara but the memorandum shows that no khariji report has been filed since the complaint was filed and the statement on oath of the prosecutrix was recorded, therefore, further report engrafts that closer report submitted by S.D.O. (Police) clubbed with the private complaint.

4. Learned counsel for the applicants would submit that fact would reveal that the applicants have been inculpated in false allegation of rape by the relative of the applicants over property dispute. It is contended that family dispute exists between the parties over the property and a civil suit was filed by the complainant alongwith other persons namely Bhondou @ Barati, Narendra and Komal etc. for partition, which was dismissed by the Civil Court on 27.09.2014. She referred to the documents filed alongwith this application i.e. the judgment and decree passed in Civil Suit No.13-A/2011 on 27.09.2014. It is further contended that in respect of such family dispute, the applicants were attacked by Barati and the prosecutrix for which sessions trial commenced bearing S.T. No.64/2014, wherein by order dated 05.02.2014, the Sessions Judge, Bemetarra had convicted the prosecutrix and her husband under Section 325 read with Section 34 of I.P.C. and imprisonment was ordered for 15 days and fine also. It is further submitted that in order to teach the lesson to the applicants, false report was made. It is further submitted that on such report, the police made an enquiry and the statements of the witnesses were recorded i.e. of one Deor Yadav, Rajkumar Yadav, Ramswarup Verma, Baldev Sen and Santosh Kumar Verma and the police on investigation came to a finding that actually the offence has not been committed by the applicants. It is contended that the prosecutrix has stated that after the incident, it was disclosed to one Deor Yadav but Deor Yadav has not supported the averments about the rape. It was further submitted that police after due investigation had filed closer report, therefore, the prosecutrix, thereafter filed the private complaint against the

police officials and the applicants and the Court below after recording the primary evidence has registered the case under Section 376 (2) read with Section 452 of I.P.C. It is therefore, submitted that the fact would lead to show that it is an outburst of a dispute pending before the parties and they are inter-se related to each other. It is contended the facts & circumstances and the degree of allegation demolishes the case itself. Therefore, it is prayed that the applicants may be enlarged on bail.

5. On the other hand, learned State counsel and counsel for the objector/respondent No.2 opposes the bail application. Counsel for the objector submits that immediately after the incident, the report was made and since the police had not taken any cognizance, private complaint was made. It is further contended that when husband and son of the prosecutrix were in jail, such rape was committed by the applicants and therefore, they are not entitled for any bail.
6. I have perused the documents filed alongwith the application, which includes the copy of the judgment and decree of the civil suit, which shows the dismissal of the civil suit filed by the complainant/prosecutrix and their family members. Further also order of the session trial No.64/2012 dated 05.02.2014, whereby the prosecutrix and her husband has been convicted. The statement of the prosecutrix and the complaint was also perused, which shows that after rape disclosure was made to one Deor Yadav but in the police statement the witness has not supported the same. Considering the totality of the facts and the manner in which the

offence is said to have been committed, taking into background and the past litigation of the parties and the statement of the witnesses and considering the rival arguments of the parties, without any observation on merits, I am inclined to release the applicants on bail.

7. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed.
8. It is directed that applicants shall be released on bail on their furnishing a personal bond in the sum of Rs.25,000/- with one surety each in the like sum to the satisfaction of the concerned trial Court, for their appearance as and when directed.
9. Certified copy as per rules.

Sd/-
(Goutam Bhaduri)
Judge