

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 5804 of 2015

Manik Bagga @ Mannu S/o. Khushbir Bagga, Aged About 19 Years, R/o. Kool Homes, Mowa, P.S. Mowa, Raipur, Distt. Raipur, Chhattisgrh

---- Applicant

Versus

State Of Chhattisgarh, Through the Police Station Khamtarai, Raipur, Chhattisgarh

---- Respondent

For Applicant : Mr. B.P.Sharma with Mr. Ravindra Agrawal,
Advocate

For Respondent : Mr. Anil S. Pandey, Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

02/11/2015

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the applicant who has been arrested in connection with Crime No.333/2015 registered at Police Station- Khamtarai, Raipur (C.G.) for the offence punishable under Sections 323, 506 Part-II (in the impugned order mentioned as 506-B), 442, 120-B, 376, 354 of the Indian Penal Code.
2. Case of the prosecution is that on 06.09.2013 the prosecutrix was called by one Bunty Sharma and thereafter, she alongwith Bunty Sharma went out and consumed liquor. Subsequently, on phone call received, the present applicant namely Manik Bagga asked her to reach particular spot wherein she alongwith Bunty Sharma went there and during the stage of intoxication against her will sexual intercourse was committed and she was also assaulted.

3. Learned counsel for the applicant submits that the prosecutrix is a married lady and she in her statement under Section 161 has stated that she is in love with Manik Bagga. It is further stated that reading of the statement under Section 164 would show that the question of rape is beyond all scope of consideration and since the prosecutrix being a major lady, the behaviour of the prosecutrix would be also relevant. He further submits and referred to an affidavit of the prosecutrix wherein it is stated that she has not been stated to have been forced to drink. Consequently, it is further stated that the residents of the locality have lodged the report against the prosecutrix for her conduct; therefore, the allegation of rape is beyond all circumstances. He would submit that since there is inconsistency in her statement under Section 161 and 164, therefore, it would be apparent that the rape is not committed and the charges are only under Section 376; consequently, he may be enlarged on bail.
4. Per contra, learned State counsel opposes the prayer for grant of bail. He would submit that the statement of the prosecutrix under Section 161 and 164 establishes the charges of rape against the applicant. He further submits that the bail application of the other co-accused has also been dismissed by this Court. Consequently, the main allegation is against Manik Bagga, therefore, he is not entitled for bail.
5. I have gone through the statement of the prosecutrix under Section 161 as also under Section 164. The statement contains the fact that the prosecutrix consumed liquor but at the same time reading of the statement under Section 164 would go to show that when she was left in the custody of the present applicant by Bunty Sharma she was assaulted and she was forced to drink and

thereafter forceful sexual intercourse was committed. The part of forceful sexual intercourse is corroborated under Section 161.

6. Considering the statement of the prosecutrix and the conduct, as the argument which is advanced by the learned counsel for the applicant that the conduct of the prosecutrix has to be seen, at this stage, the bare perusal of the statement under Section 161 and 164 do not allow the same for this Court, as *prima facie* allegation of forceful rape has been alleged against the applicant alongwith assault. Therefore, I am not inclined to release the applicant on bail.
7. Accordingly, the bail application filed under Section 439 of Cr.P.C. is dismissed.

Sd/-
(Goutam Bhaduri)
Judge