

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 1386 of 2016**

1. Fulchand @ Munna Yadav, S/o Muneshwar Yadav, aged about 35 years
2. Surendra @ Bablu, S/o Muneshwar Yadav, aged about 24 years

Both are R/o Village – Talkeshwarpur, P.S. - Sanaval, District – Balrampur- Ramanujganj, Civil and Revenue Distt. Balrampur- Ramanujganj (C.G.)

---- Applicants**Versus**

State Of Chhattisgarh Through Police Station-Sanaval, District Balrampur (C.G.)

---- Non-applicant

For Applicants: Mr. A.K. Prasad, Advocate.
For Non-applicant/State: Mr. Suvigya Awasthy, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****29/03/2016**

Heard.

(1) The accused/applicants have preferred this bail application under Section 439 of the Code of Criminal Procedure for releasing them on regular bail during trial in connection with Crime No.26/2015 registered at Police Station –Sanaval, District Balrampur for the offences punishable under Sections 376 (D) & 506 of Indian Penal Code.

(2) Case of the prosecution, in brief, is that on 3.10.2015 at about 4 A.M. applicants committed sexual intercourse with the major prosecutrix against her will and thereby committed the aforesaid

offences.

(3) Learned counsel for the applicant submits that husband of the prosecutrix namely Mahendra Yadav committed sexual intercourse with the wife of applicant No.1 on 12.04.2015 and FIR bearing Crime No. 9/2015 for offence under Section 376 IPC was lodged against him; and in that case charges were framed against the husband of the prosecutrix under Section 376 IPC and since then prosecutrix's husband- Mahendra Yadav is in custody. He further submits that in order to settle the criminal case pending against her husband, when the case is fixed for evidence of the prosecution witnesses, such a false report was lodged on 3.10.2015 by the prosecutrix at about 6 AM i.e. after 12 hours for offence under Section 376(D) IPC, in which the applicants are languishing in jail since 9.10.2015 and, as such, there is no external injuries or internal injuries were found in her person and neither broken bangles nor torn clothes have been seized from the place of occurrence and, therefore, only to pressurize the applicants for settling the criminal case between the prosecutrix's husband for offence under Section 376 IPC, such a false complaint has been lodged against the applicants, which is apparent from the statement of Budhni Bai, mother-in-law of the prosecutrix. He also submits that wife of applicant No.1 has also filed complaint before the Superintendent of Police, Balrampur that family members of Mahendra Yadav (husband of the prosecutrix) are forcing her for compromising by not giving evidence in that criminal case and for making incorrect statement before the Court and the charge sheet has already been filed on 7.12.2015 and, therefore, the applicants may be released on bail.

(4) On the other hand, counsel for the State opposes the bail application.

(5) It is not in dispute that on the report lodged by wife of applicant No.1-Fulchand, for offence under Section 376 IPC, Crime No.9/2015, the husband of the prosecutrix – Mahendra Yadav is in jail and trial is pending consideration. Instant FIR has been lodged on 3.10.2015 that present applicants, who are real brothers, committed sexual intercourse with the prosecutrix on said date. It is also not in dispute that wife of applicant No.1 has lodged report against the family members of prosecutrix that they are forcing to settle the criminal case and not to make statement in a court against the husband of the prosecutrix.

(6) Taking into consideration the nature & gravity of the offence, facts & circumstances of the case; earlier report by the wife of applicant No.1 against the husband of the prosecutrix- Mahendra Yadav for offence under Section 376 of Indian Penal Code, in which Shri Yadav is in custody and after 10 months of that incident, present FIR has been lodged against applicants, who are real brothers, that on 3.10.2015 they have raped with the prosecutrix, taking into account in absence of external and internal injuries on her body, report lodged by wife of applicant No.1, against the prosecutrix's husband, false report by the prosecutrix against the applicants for offence under Section 376(D) of the Indian Penal Code to save her husband from the criminal case cannot be ruled out, at this stage, they are in custody since 9.10.2015; and the charge sheet has already been filed; this Court is of the view that it is a fit case to release the applicants on bail. Accordingly, the bail application is allowed.

(7) Accused/applicants– **Fulchand @ Munna Yadav and Surendra @ Bablu** are directed to be released on bail on each of them executing

a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the trial Court. They are directed to appear before the trial Court on each and every date given to them by the said Court till disposal of the trial. However, the respondent/State is at liberty to move an application for cancellation of bail under Section 439(2) of the Code of Criminal Procedure, at appropriate stage.

Certified copy, as per rules.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-