

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 2554 of 2016

- Manik Bagga @ Mannu S/o Khushbir Singh Bagga Aged About 19 Years R/o Mova Cool Homes, Daldalseoni, Raipur, Presently At Adwani Colony, Raipur, Civil & Rev. Distt. Raipur, Chhattisgarh. --- **Petitioner**

Versus

- State Of Chhattisgarh Through Station House Officer Police Station Khamtarai, District Raipur, Chhattisgarh. --- **Respondent**

For the applicant	:	Mr. Vivek Ranjan Tiwari, Advocate
For the Respondent	:	Mr. Anil S. Pandey, Govt. Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

13.05.2016

1. This is third bail application filed under Section 439 of the Code of Criminal Procedure seeking grant of regular bail to the applicant in connection with Crime No. 333/2015 registered at P.S. Khamtarai, District Raipur (C.G) for the offence punishable under Section 323, 506-II, 442, 120-B, 376 & 354 of IPC.
2. The first bail application was dismissed on 02.11.2015. Thereafter, the petitioner has preferred SLP before the Supreme Court which was dismissed as withdrawn on 18.01.2016. Subsequently the second bail petition which was filed before this Court was dismissed on 05.02.2016 after considering the statement of prosecutrix as she was examined in part.
3. As per the prosecution, on 6.09.2013 the prosecutrix was called by one Bunty Sharma and thereafter, she alongwith Buntry 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 along-with Bunty Sharma went there and during the state of intoxication against her will sexual intercourse was committed and she was also assaulted.

4. Learned counsel for the applicant would submit that the prosecutrix has been examined in extenso and the reading of her the statement would show that she has not stated anything about the rape. He would further submit that only the allegation that something had happened as has been narrated by the prosecutrix cannot be attributed that she was subjected to rape. It is further stated that the prosecutrix is a married lady of 22 years and the way in which the offence took place and she has admitted the transcript of Phone which was confronted during her cross examination would show that she was a consenting party to the relation if any between the parties. He further submits that the Doctor and FSL report also do not support the commission of rape. It is submitted that in the circumstances, considering the fact that the applicant is in jail for the last about 9 months he prays that the applicant may be enlarged on bail.
5. Learned State Counsel opposes the bail and would submit that in examination-in-chief, positive statements have been made.
6. Perused the statement of prosecutrix. It appears that initially she was examined on 04.01.2016. It is stated that on the date of incident on 6.09.2015, she consumed liquor alongwith applicant and thereafter went in the Car. Subsequently till the next day, she was in the company of applicant. The prosecutrix was further examined on

05.01.2016 wherein she has stated that something had happened with her. The deposition would show that thereafter the witness was further examined on 14.03.2016 and stated that for the first time, she stated in Court that she was subjected to rape. In cross examination on behalf of applicant, the prosecutrix has stated that she has named the applicant as he was in the company of prosecutrix. The transcripts of mobile phone whereby the conversations were made between them on 02.09.2015, 04.09.2015, 05.09.2015, 6.09.2015 and 8.09.2015 when was confronted she admitted such transcripts. The transcripts have been placed on record which shows that conversation was made made between the applicant and prosecutrix as also with the mother of applicant and other family members of the applicant prior to the date of incident and even after the date of incident which prima facie shows the relations.

7. After examining the transcripts an statement of the prosecutrix, without any observation on merits of the case, I am inclined to allow this application.
8. Accordingly, the bail application is allowed and 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 trial Court as and when directed by the said Court.
9. C.c. as per rules.

Sd/-
GOUTAM BHADURI
JUDGE