

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 5691 of 2016

Vikas Verma, S/o. Ganesh Shankar Verma, Aged About 37 Years, R/o. U.P. RIMS and Saifai, Etawah, District Etawah (Uttar Pradesh).

---- Applicant

Versus

State Of Chhattisgarh, Through Station House Officer, Police Station - Moudhapara, Raipur, District Raipur, Chattisgarh.

---- Respondent

For Applicant	:	Mrs. Fouzia Mirza, Advocate
For State	:	Mr. Anupam Dubey, Dy. Govt. Advocate
For Objector	:	Mrs. Hamida Siddiqui, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

02.11.2016

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.253/2014 registered at Police Station- Moudhapara, District Raipur (C.G.) for the offence punishable under Section 376 of Indian Penal Code.
2. As per the prosecution case, a written report was made by the victim/ prosecutrix that she is a student of Dental College and she came in contact with the applicant via Facebook since they having the same profession, the victim accepted the friendship offer. Subsequently, the applicant on 25.12.2014 came to Raipur to conduct viva voice exam wherein the victim met him. Thereafter she was called to the Hotel wherein she was ravished against her will. She being a student immediately could not inform about the incident, but subsequently she informed to her friend and parents and the FIR was lodged on 29.12.2014.

3. Learned counsel for the applicant would submit that the victim girl was aged about 25 years and she was knowing fully well that what was happening to her. The alleged incident happened in the Hotel room and according to the report and charge sheet, no alarm was raised by the victim which could have been objected by the adjacent room occupier of 308 & 307 of the Hotel. It is further contended that the statement of the Manager also would show that when the victim came out of the room, she behaves normally and after 29.12.2014 when the victim went to the Gynecologist, the report was made. The counsel further submits that the victim has stated that before the incident, the applicant was wearing protection and victim did not object to it, therefore, it would show the conduct of the victim that she was a consenting party. It is further contended that against the arrest, the applicant had approached to the Supreme Court and an interim protection was granted on 08.07.2015 and thereafter after completion of the investigation, the charge sheet has been filed and the applicant who was on interim protection did not misuse the liberty. The counsel further referred to the chatting in the whatsapp and would submit that the victim knowing full well that the applicant was married came in contact with the applicant and she herself had went to the place of incidence. She further submits that the charge sheet has been filed, no further investigation is necessary and the applicant is in jail since 14.09.2016, therefore, he may be released on bail.
4. Per contra, learned State counsel opposes the prayer for grant of bail.
5. Learned counsel for the objector vehemently opposes the bail and would submit that the victim was having a good family background

and she never expected that the incident would have happened in such a way. It is contended that had she been a consenting party, she would have gone to join hotel in night of 25th December itself. It is further contended that if at all she was a consenting party, she would not have disclosed to anyone but instead after the incident, it was immediately disclosed to one Rajni Chouhan, her room mate in hostel. Subsequently, she went back to her house and initially it was disclosed to her brother, thereafter, was communicated to the mother which would go to show that she was not a consenting party. She further submits that the victim had no experience or was not smart enough to understand the trap of applicant. It is stated that after the incidence, she could not narrate the fact to any one and confined it within herself because of social stigma. She further placed a reliance in case of ***State of Rajasthan v. Roshan Khan & Others***¹ and would submit that as per Section 114-A of the Evidence Act, the consent cannot be presumed and here in this case, it is specifically been denied by victim. It is further submitted that the applicant also lodged a false report at Etawah against the victim that she has demanded Rs.15 Lakhs, which after investigation was found to be false. She therefore submits that the applicant may not be enlarged on bail.

6. Perused the case diary and the documents. The statement under Section 161 & 164 of Cr.P.C. of victim also perused. The statements do not suggest that she was a consenting party as the statements are otherwise and complete incident has been narrated. The WhatsApp chat in between victim and applicant after the incident one of the conversation reads like this – which is filed by parties.

¹ 2014 CRI. L.J. 1092

: WhatsApp conversation :

“1:40 PM, Dec 26 – Dr. Vikas Verma : Sorry.

1:46 PM, Dec 26 – (Victim) : I trusted u sir... I trusted you a lot... Hmara bharosa toota.... Uska kya karenge ab hm.... please help me to come out of this..... beg u sir.....

1:48 PM, Dec 26 – (Victim) : How will I trust anyone now ? ”

7. Taking into background of this case and the position of the victim the facts prima facie show the victim is a student and the applicant is a Professor, who came for viva voice examination to College at Raipur. The statement would show that victim when went to meet the applicant at hotel, she waited at reception and subsequently she was called to room and offered breakfast and victim when requested to go out but eventually committed rape by force and thereafter offered money. After the incident, the victim had disclosed it to her room mate friend. The statement of Rajni Chouhan and the brother of the victim also supports the fact that the incident was disclosed to them by the victim. This fact cannot be side-lined that the applicant who is a professor also made a report at Etawah that the victim tried to blackmail to give higher number and demanded Rs. 15 Lakhs. Therefore, taking into totality of the facts and the existing facts and the background of the case and further considering the position of victim as against applicant, the effort to exert pressure on witnesses also cannot be ruled out. Therefore, taking into totality, I am not inclined to release the applicant on bail.
8. Accordingly, the bail application filed under Section 439 of Cr.P.C. is dismissed.