

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. CRIMINAL CASE NO. 6739 OF 2017

1. Smt. Kiran Shriwas, aged about 34 years, W/o Shiv Shriwas
 2. Shiv Shriwas, aged about 39 years, S/o Vishwanath Shriwas
Both R/o Bagichapara, Ramkund, Raipur, District Raipur (C.G.)
- ... Applicants**

versus

State of Chhattisgarh, through : Station House Officer, Police Station- Azad Chowk, Raipur, District Raipur (C.G.)

... Respondent

For Applicants	:	Mr. Pradeep Singh Rathore, Advocate.
For Respondent-State	:	Mr. D.R. Minj, Dy. Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06/12/2017

1. The present is an application filed under Section 439 of CrPC seeking for grant of bail to the Applicants who are in jail since 29.3.2017 in connection with Crime No.73/2017 registered at Police Station- Azad Chowk, Raipur, District Raipur, for the offence punishable under Sections 302, 376 read with Section 34 of IPC.
2. Allegation against the Applicants as per the prosecution case is that the Applicant No.1-Smt. Kiran Shriwas is said to have assaulted the deceased-Dasri Bai and banged her head to the wall causing injuries to her and so far as Applicant No.2-Shiv Shriwas is concerned he is said to have had sexually ravished the deceased before the incident.
3. Learned Counsel for the Applicants submits it is a case where the ingredients required for making out an offence under Section 376 of IPC is not available in the entire case diary. It is also a case where the deceased herself had not complained about Applicant No.2-Shiv Shriwas having raped her when she was alive and therefore the case under Section 376 of IPC is not made out. He further submits that apart from the allegation of rape, there is no allegation made against Applicant No.2-Shiv Shriwas and

so far as Applicant No.1-Smt. Kiran Shriwas is concerned the only piece of material available against her is that she is said to have took up a fight with the deceased for coming to the house of the Applicants and having liquor with her husband and that in the course of the fight, the Applicant No.1 is said to have banged the head of the deceased to the wall. He further submits that it is a case where after the incident, the deceased without any difficulty had on her own gone to her house and she also went to the hospital for treatment only on 11.10.2015 i.e. after 7-8 days from the date of incident and that she ultimately died after another 7 days on 17.10.2015 and all these would show that the element required for making out an offence under Section 302 of IPC is not available. He thus prayed for grant of bail to the Applicants.

4. Learned Counsel for the State however opposing the bail application submits that there are materials available before this Court which show that Applicant No.1-Smt. Kiran Shriwas is said to have assaulted the deceased and had also banged her head on the wall and there are eye-witnesses also to that extent. So far as Applicant No.2-Shiv Shriwas is concerned, learned State Counsel submits that the vaginal swab which had been sent for examination has also come with a positive note of human semen found in it and therefore the Applicant No.2 is said to have raped the deceased before the incident. He thus prayed for the rejection of the bail application.

5. Heard the submissions put forth on either side and perused the record.

6. So far as Applicant No.2-Shiv Shriwas is concerned, except for the allegation of rape against him there is no averment of any overt-act on his part in the death of the deceased and so far as the allegation of rape is concerned the deceased herself right from 4.10.2015 till 17.10.2015 when

she died, had not complained of being raped by him, neither is there any prima facie conclusive evidence available with the prosecution to establish that he was the person who had sexual intercourse with the deceased.

7. So far as Applicant No.1-Smt. Kiran Shriwas is concerned, except for an assault being made in the course of alleged fight of banging the head of the deceased to the wall, there does not seem to be any other allegation made against her of having any earlier enmity, that she had with predetermined intention of killing the deceased, caused the injuries to the deceased.

8. Given the factual matrix of the case, this Court is of the opinion that prima facie a strong case is made out for grant of bail to the Applicants.

9. Accordingly, the bail application is allowed. It is ordered that the Applicants shall be released on bail on each of them furnishing a personal bond for a sum of Rs.25,000/- with one surety of the like sum to the satisfaction of the concerned Trial Court for their appearance as and when directed.

Sd/-
(P. Sam Koshy)
Judge