

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 3890 of 2017

- Vijay Kumar Ghavde S/o Dilip Kumar Ghavde, Aged About 25 Years, R/o Village- Gotulmunda, Police Station- Ambagarh Chowki, District- Rajnandgaon, Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station- Ambagarh Chowki, District- Rajnandgaon, Chhattisgarh.

---- Non-applicant

For Applicant – Shri S.K.Agrawal, Advocate.

For Non-applicant/State – Shri N.K.Mehta, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

12-07-2017

1. Heard the matter finally.
2. Learned counsel for the applicant would submit that the applicant held arrested in connection with Crime No.44/2017 on 06-3-2017 by P.S. Ambagarh Chowki, District- Rajnandgaon, C.G. for the offence under Section 376, 376 sub-section 2(n) and Section 506 of the IPC. After investigation charge sheet has been filed, which is pending before the Additional Sessions Judge (FTC) Rajnandgaon, C.G. as Sessions Trial No.31/2017. Learned counsel for the applicant would submit that in the written report the date of incident is 10 December 2015 and the date of incident shown in the FIR is from 10 December 2015 till 20 January 2017; despite the said fact the prosecutrix had lodged the FIR on 6 March 2017; there is no reason for such delay even after 20 January 2017 which is suspicious. The prosecutrix is a mature woman, teacher in a school, she understands the good and bad; and as per the contents of the FIR, it appears that it is false allegation or case of consent and when the applicant denied to marry the prosecutrix then only she lodged the report falsely implicating the applicant regarding commission of rape. Learned counsel would further submit that in a similar matter, Criminal Writ Petition

No.1787 of 2016 vide order dated 19-12-2016 the puisne Judge of High Court of Bombay discharged the accused for the charge under Section 376 of the IPC. In the said matter allegation was in the pretext of marriage the petitioner made physical relation with the prosecutrix and also cheated her by demanding money and not performing the marriage. Hence, the instant MCRC may be allowed and the applicant may be enlarged on bail.

3. Per contra, learned counsel for the State/non-applicant opposed the argument advanced on behalf of the applicant on the basis of the facts surfaced in the written report, FIR and Section 161 Cr.P.C. statement of the prosecutrix and would submit that prima facie offence is committed. Hence, the instant MCRC may be dismissed.

4. Perused the entire material.

5. On consideration of the FIR, written complaint and the statement of the prosecutrix, prima facie, there exist the fact of rape initially first time without consent and will of the prosecutrix. The case law cited is of no relevance in the present matter because the element of rape against will and consent is surfaced in the present matter and lacking in the said matter, also the said matter is a criminal writ petition whereas the present matter is in relation with bail.

6. On consideration of the entire facts, I am not inclined to grant bail to the applicant. Consequently, the instant MCRC is hereby dismissed.

Sd/-

(Chandra Bhushan Bajpai)
Judge