

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Criminal Case No.4313 of 2017**

- Shafiq Ahmad S/o Hajrat Ali, Aged About 17 And Half Year R/o Kelhari, Thana Kelhari, District Koriya Chhattisgarh Through Father Hajrat Ali, R/o Kelhari, Thana Khelhari, District Koriya Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Police Station Kelhari, District Koriya Chhattisgarh

---- Respondent

 For Applicant : Shri Parag Kotecha, Advocate
 For Respondent/State : Shri Anant Bajpai, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order On Board

01.9.2017

Perused Office note dated 26.8.2017. In the said note, it is submitted that co-accused Akash and Surfaraj have not preferred any petition in connection with present matter. There is no disclosure of facts regarding filing of any petition by the co-accused Yogesth Pratap Singh.

2. Heard the matter finally.

3. This is an application filed under Section 439 of the Cr.P.C. for grant of regular bail to the applicant, who has been arrested in connection with Crime No.82/2017 registered in Police Station Kelhari, distt. Koriya (CG) for the offence punishable under Sections 341, 363, 328, 366, 366A, 376D of the Indian Penal Code and under Section 3(1)(w), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Atrocities Act').

3. Learned counsel for the applicant submits that the applicant has been arrested on 31.12.2016, after investigation charge sheet has been filed which is pending before Special Judge under the Atrocities Act as Special Session Trial No.24/2017. Learned counsel for the applicant would submit that he was not named in the FIR. In the statement earlier recorded under Section 161 CrPC, role of the applicant was not stated. Thereafter in the supplementary statement recorded under Section 161 of the CrPC name and role of the applicant was stated. During the trial the prosecutrix was also examined, she has not supported the case of the prosecution and turned hostile, hence on the entirety of the matter, the applicant may be enlarged on bail.

4. Per contra, learned counsel for the State opposed the arguments advanced on behalf of the applicant.

5. Perused the entire material.

6. The trial is pending before trial judge. This is not a forum where evidentiary value of the statement of the prosecutrix during trial is to be appreciated as this Court is to appreciate the matter as required under Section 439 of CrPC. After perusal of the entire material, evidence collected against the applicant, considering the fact that the matter is of a gang rape, the role of the applicant as stated by the prosecutrix in her statement recorded under Section 161 CrPC, on consideration of the entire facts, I am not inclined to grant bail to the applicant.

7. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is hereby dismissed.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE

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