

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 7256 of 2017

- Sabra Bibi W/o Samim Khan Musalman, Aged About 55 Years, Caste- Momin, R/o Village Salba, P. S. Baikunthpur, District Korea Chhattisgarh
- Jaitun W/o Late Md. Israt, Aged About 32 Years, R/o Village Salba, P. S. Baikunthpur, District Korea Chhattisgarh

---- Applicants

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Charcha, District Korea Chhattisgarh

---- Non-applicant

And

MCRC No. 7401 Of 2017

- Nasheem Khan @ Bhola Musalman S/o Alim Khan, Aged About 44 Years, R/o Bhaisamuda Kewra Jamtipara, Police Station Pratappur, District Surajpur Chhattisgarh

---- Applicant

Vs

- State Of Chhattisgarh Through Station House Officer, Police Of Police Station Charcha, District Korea Chhattisgarh

---- Non-applicant

For Applicant(s) – Shri Ishwar Jaiswal, Advocate (in MCRC No.7256/2017),
Shri Anil Gulati, Advocate (in MCRC No.7401/2017).
For Non-applicant/State – Shri Anant Bajpai, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order on Board

14-12-2017

1. As both these MCRC arise out of the same crime number, they are being decided by this common order.
2. Heard on both the applications filed under Section 439 of the Cr.P.C. These are first bail application before this Court by the applicants for grant of regular bail. Applicants Sabra Bibi and Jaitun in MCRC No. 7256/2017 have been arrested on 23-07-2017 in connection with Crime No. 93/2017 registered at P.S. Charcha, District Korea, C.G for the

offence under Section 363, 366, 368, 376, 342, 506, 323 of the IPC and Section 3, 4, 5(᳚) & 6 of Protection of Children from Sexual Offences Act, 2012 and Section 3(1)(12), 3(2)(5) of SC/ST Act and applicant Nasheem Khan @ Bhole Musalman in MCRC No.7401/2017 has been arrested on 09-09-2017 in connection with Crime No.93/2017 registered at P.S. Charcha, District Korea, C.G. for the offence under Section 363, 368, 376, 342, 506, 323, 347, 420, 193, 196 of the IPC r/w Section 3, 4, 5᳚, 6 of Protection of Children from Sexual Offences Act and Section 3(1)(12), 3(2)(5) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

3. It is submitted on behalf of the applicants that the applicants are innocent and they have been falsely implicated in this case. The case has been investigated and charge sheet has been filed. On the basis of the evidence in prosecution case no case is made out against the applicants. Applicants in MCRC No.7256/2017 are mother and sister of the main accused Niyamatulla, whereas, applicant in MCRC No.7401/2017 is brother-in-law of the main accused. There is no specific statement by any of the witnesses that the applicants have in any manner aided or abetted the offence as alleged to be committed by the main accused. Applicants in MCRC No.7256/2017 are in jail since 23-07-2017 and applicant in MCRC No.7401/2017 is in jail since 09-09-2017. They are ready to abide by all the conditions imposed on them on grant of bail. Hence, it is prayed that the applicants may be granted regular bail.

4. Learned counsel for the State/non-applicant opposes the applications and submission made in this respect. It is submitted that the prosecutrix in this case is below the age of 18 years, she was enticed and abducted by the main accused Niyamatulla on 09-01-2017. Thereafter,

he took shelter with the prosecutrix in various places where relatives of the main accused were residing. In the meanwhile, the main accused also resided for some time in his own house of which the applicants in MCRC No.7256/2017 are members. Hence, this shows that the applicants have aided and abetted the commission of the offence committed by the main accused. Therefore, none of the applicants is entitled for grant of regular bail.

5. Heard learned counsel for the parties and perused the case diary.

6. The case against the applicants is this, that main accused Niyamatulla was agent of Life Insurance Corporation. On 09-01-2017 he allured the prosecutrix that he required some signature on papers for the insurance policy and took her on his motorcycle to various places. On staying in said places he used to have sexual intercourse with her forcefully without her consent and willingness. The prosecutrix happens to be a member of tribal community. The applicants have made accused because the main accused has found shelter in the residences of these applicants where he stayed along with the prosecutrix and committed rape with her.

7. Considered on the submissions made and the contents of the case diary.

8. Perused the statements of the witnesses and particularly the statement of the prosecutrix under Section 161 and also under Section 164 of the Cr.P.C. The question that the applicants have willingly cooperated with the main accused has to be answered by the trial Court on the basis of the evidence that will be produced before it. At present, looking to the facts that the applicants are in jail since quite some time, they are local residents of District Korea, their availability before the trial

Court can be ensured and the trial of the case is likely to take some time for its conclusion and also taking into consideration the role played by these applicants, I am of this view that they deserve to be enlarged on bail during pendency of the trial before the trial Court.

9. Consequently, the applications (MCRC No.7401/2017 and MCRC No.7256/2017) filed under Section 439 of the Cr.P.C. by the applicants are hereby allowed. It is directed that the applicants shall be released on bail on each of them furnishing a personal bond in the sum of Rs.25,000/- with one surety each in the like sum to the satisfaction of the concerned Court, for their appearance as and when directed.

10. Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge