

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.CR.C. No. 7796 of 2017**

Jaspal Singh @ Jashan Singh, S/o. Raspal Singh, Aged About 19 Years, R/o. Village- Budchand, P.S.-Bhikhiwind, District -Taran Taran (Punjab). Present Address- Veer Savarkar Nagar, House No. CH-194, P.S.-Kabir Nagar, Raipur, District-Raipur, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh, Through : P.S. -Kabir Nagar, Raipur, District -Raipur, Chhattisgarh.

---- Respondent

For Applicant : Mr. M.P.S. Bhatia, Advocate

For State/respondent : Ms. Smita Ghai, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board**22/03/2018**

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicant, who has been arrested in connection with Crime No.45/2016, registered at Police Station – Kabir Nagar, District – Raipur (C.G.), for the offence punishable under Section 376 (g), 342 of the Indian Penal Code read with Section 4, 6 of Protection of Children from Sexual Offences Act, 2012.
2. It is submitted by the learned counsel for the applicant that the applicant has been falsely implicated in this case. Prosecutrix has

lodged totally a false FIR against this applicant making false allegation as it is reflected in the complaint made by the prosecutrix on 28.05.2016 in the Police Station about the nuisance created by the applicant and others in front of her house, on that basis case was filed U/s. 107/116 of Cr.P.C. before the Executive Magistrate, whereas, the date of incident alleged in the case is 27.05.2016. Subsequent to that a belated FIR was lodged on 04.06.2016 in the police station making allegation of gang rape against this applicant and others without any basis. It is further submitted that the medical examination report of the prosecutrix also does not support the prosecution case, as no injuries were found on the private part and there is no opinion of the doctor regarding any occurrence of sexual intercourse with the prosecutrix. Applicant is in jail since 30.08.2016 and ready to abide by all the conditions imposed for grant of bail. Therefore, it is prayed that the applicant may be enlarged on regular bail.

3. On the other hand, learned counsel for the State opposes the bail application and the submission made in this respect. It is submitted, that in the FIR and the statement recorded under Section 161 and 164 of Cr.P.C., clear allegation has been made against this applicant and co-accused about the offence of gang rape committed by them. The prosecutrix was a minor on the date of incident and the report of examining doctor is just an opinion, which needs consideration by the Court concerned. It is also submitted that bail application of the co-accused has been rejected by this Court, hence, no case is made out for grant of bail. Therefore, it is prayed that the application may be rejected.

4. I have heard the learned counsel for both the parties and perused the case diary.
5. The case of the prosecution in brief is this that on 27.05.2016, the prosecutrix had been to the house of this applicant to give food, when she got inside, the applicant closed the door then the applicant and one Pamma Singh by force committed the offence of rape with her. The prosecutrix went unconscious and when she regained consciousness she was told that, a video recording has been prepared and photographs have also been taken of her and she was threatened that, if she, discloses about the incident to anybody else, video and photographs shall be made public. However, gathering some courage, she approached the police station on 28.05.2016, but she was forced to compromise by some persons, who came from Gurudwara and because of that police refused to lodge FIR. The parents of the prosecutrix were out of station and after their arrival, on 03.06.2016, FIR was lodged on 04.06.2016.
6. Considered on the submissions made and the entire material present in the case diary. The State has received a report regarding complaint dated 28.06.2016, which confirms the fact that prosecutrix has approached the police station on that date. Apart from that there is statement of the prosecutrix herself that her FIR was not lodged because she was informed by the police that there was a compromise regarding the incident that has taken place. Statement of the prosecutrix is to be believed or not, it has to be determined by the concerned trial Court. The medical examination report, which has been relied by the applicant though appears to be negative, but according to

the current definition under amended provisions of Indian Penal Code under Section 375 and 376, this opinion of the concerned doctor is also debatable. Hence, looking to the grievousness of the allegations made by the prosecutrix in this case, this Court is of the opinion that present is not a fit case, in which, the applicant should be enlarged on regular bail.

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

Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge