

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 3758 of 2018**

Sunil Pandey, S/o late Kahsi Prasad Pandey, aged about 29 years, R/o Village Devri, P.S. Dharsiva, Tahsil and District Raipur (CG).

---- Applicant**Versus**

State of Chhattisgarh, through Police Station Dharsiva, District Raipur.

---- Non-applicant

For Applicant : Mr. Rajesh Kumar Jain, Advocate.

For Non-applicant : Mr. Dhiraj Wankhede, Government Advocate

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****18.07.2018**

1. This is first bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court and no other bail application is pending before any other Court.
2. Perused the copy of charge-sheet provided by the counsel for the applicant in connection with crime No.575/2017 registered at Police Station – Dharsiva, District - Raipur (C.G.) for the offence punishable under Sections 376(2)(f)(d), 506, 34 of the Indian Penal Code.
3. Case of the prosecution, in brief is that the prosecutrix, who is aged about 19 years and resident of Saankra. Her brother Vikki Singh Rajput is a criminal. On 28.11.2017 her brother Vicky Singh Rajput and the present applicant took her by saying that they will do the business of Saree at Raipur, when they reached near the Gajraj Pond (Talab) at village Devri at about 1:00 pm, the applicant and Vikki Singh Rajput both of them committed the sexual intercourse with her and threatening her

to kill. Thereafter, they took her towards at village Khamariya, when they lose the way, then the prosecutrix saw the police station near the way and went to police station, Khamariya. Thereafter, police sent her to “Sakhi Center, Bemetara.” On 01.12.2017 when her maternal-uncle Prabhu Singh reached there then she narrated the whole incident to her maternal-uncle and in-charge of Sakhi Center, Bemetara. Thereafter, on the same day i.e. 01.12.2017 she lodged a report against the applicant and her brother Vikki Singh Rajput in the police station, Dhamtari.

4. Counsel appearing for the petitioner would submit that in the Rojnamcha Sanha No.888 dated 28.11.2017 of police station Khamariya, it has not been mentioned that prosecutrix was told about the alleged rape against the applicant and her brother Vikki Singh Rajput. The time of alleged is different in FIR, in the statement recorded under Section 164 of CrPC and in the statement recorded under Section 161 of CrPC and there is also delay in lodging the FIR. He would further submit that the applicant has not committed any offence and has been falsely implicated in the case and as such the applicant is entitled to be released on bail.

5. On the other hand, counsel appearing for the State would oppose the prayer for grant of bail to the applicant.

6. I have heard counsel for the parties and perused the case diary with utmost circumspection.

7. In FIR, it has been mentioned that when maternal-uncle of prosecutrix reached in Sakhi Center, Bemetara then she narrated the whole incident to her maternal-uncle and in-charge of Sakhi Center, Bemetara. Moreover, the alleged time of incident is also different in FIR; in the statement recorded under Section 164 of CrPC and in the statement recorded under Section 161 of CrPC are not sufficient

grounds to get the benefits of Section 439 of CrPC to the applicant. Moreover, Government Advocate submitted that two criminal cases have already been registered against the applicant.

8. Looking to these facts and circumstances of the case, looking to the seriousness of the offence, looking to the impact of granting bail to the applicant on society, this Court is not inclined to give benefit of Section 439 of the Cr.P.C. to the applicant.

9. Consequently, the present bail application is rejected.

10. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)
JUDGE

L/-