

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Criminal Case No. 4464 of 2018**

1. Pradeep Mandle S/o Babulal Mandle, aged about 21 years, R/o- Suhela, Thana- Suhela, District- Baloda Bazar, Chhattisgarh
2. Shailesh Diwakar S/o Vijaylal Diwakar, aged about 21 years, R/o- Suhela, Thana- Suhela, District- Baloda Bazar, Chhattisgarh

---- Applicants**Versus**

State of Chhattisgarh through- Station House Officer, Police
Station- Suhela, District- Baloda Bazar, Chhattisgarh

---- Respondent

For Applicants	:	Shri Samir Singh, Advocate
For Respondent/State	:	Shri Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****06/07/2018**

At the outset, counsel for the applicants prays for withdrawal of the bail application so far as applicant no.1 namely Pradeep Mandle is concerned with a liberty to revive the same after the prosecutrix is examined.

2. Prayer is allowed.

3. Accordingly, the bail application, so far as applicant no.1 is concerned, stands rejected with the aforesaid liberty.

4. So far as applicant no.2 is concerned, counsel for the applicant submits that this is the first bail application filed u/s 439 of Cr.P.C. for grant of bail to applicant no.2 who is in jail since 05.03.2018 in connection with Crime No. 63/2018 registered at , Police Station- Suhela,

District Baloda Bazar (CG) for the offence punishable under Sections 363, 366A, 342, 376/34 of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012.

5. The allegation against applicant no.2 as per the prosecution, is that he is the person who had assisted applicant no.1 in commission of the offence of rape on the prosecutrix on 02.03.2018.

6. Counsel for the applicant submits that it is a case where applicant no.2 is not involved in the said commission of offence in any manner. The only allegation against applicant no.2 is that he is said to have locked the door of the shop of applicant no.1 at the instance of applicant no.1 and that he was totally unaware of the further development and the act on the part of applicant no.1.

7. State counsel, however, opposing the bail application submits that applicant no.2 is the person who had assisted applicant no.1 in commission of the offence by locking the door of the shop from outside confining the prosecutrix within the shop along with applicant no.1. Therefore, applicant no.2 cannot escape from the allegation of assisting applicant no.1.

8. Having heard the contentions put forth on either side and on perusal of the record what reflects is that applicant no.1 and the prosecutrix were already in the shop and that applicant no.2 came to the shop at very late stage where he was only advised by applicant no.1 to lock the door from outside and to give keys to the shop owner i.e. applicant no.1. The fact that applicant no.2 was ignorant of the plan and intention of applicant no.1 cannot be ruled out as there is no averment by the prosecutrix of the applicant no.2 being aware of applicant no.1 intending to rape the prosecutrix inside the shop.

9. Given the facts and circumstances of the case, this Court is of the opinion that prima facie, a strong case for grant of bail to applicant no.2 is made out.

10. Accordingly, the application for grant of bail, so far as applicant no.2 is concerned, is allowed. It is directed that applicant no.2 Shailesh Diwakar will be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned trial Court for his appearance before the said Court as and when directed.

**Sd/-
(P. Sam Koshy)
JUDGE**