

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 4895 of 2018

- Gorelal Sahu S/o Ghasiya Ram Aged About 41 Years R/o Village Louda, Police Station Pathariya District Mungeli Chhattisgarh, District : Mungeli, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Station Pathariya District Mungeli Chhattisgarh, District : Mungeli, Chhattisgarh

---- Respondent

For Applicant	:	Mr. N.K. Shukla, Sr. Advocate with Mr. O.P. Sahu, Advocate.
For Respondent	:	Mr. Ashok Swarnkar, Panel Lawyer.
For Objector	:	Mrs. Hamida Siddiqui, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

05/09/2018

1. This is the second bail application filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973. His first application was dismissed as withdrawn.
2. This bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicants who have been arrested in connection with Crime No.117/2018 registered at Police Station– Pathariya, District– Mungeli(C.G.) for the offence punishable under Sections 376, 294 & 506 of the Indian Penal Code and Section 4, 6 of Protection of Children from Sexual Offence Act, 2012.

3. It is submitted by the learned counsel for the applicant that applicant has been falsely implicated in this case. Applicant is in jail since 3.3.2018. No case is made out against him according to FIR lodged on the date of incident i.e. 18.2.2018. On 1.2.2018 also FIR was lodged on the basis of typed complaint given by father of prosecutrix and the prosecutrix was medically examined on 3.3.2018 i.e. after about more than 12 days from the date of incident. Therefore, the report of FSL showing presence of human spermatozoa on the vaginal slides of the prosecutrix is of no significance. These facts show that the case has been concocted against the applicant. There are variations in the statements given by prosecutrix under Section 161 CrPC and 164 CrPC which again shows the lacuna in the prosecution case. Further, on the basis of the material collected in the course of investigation it cannot be said that the prosecutrix is mentally challenged. This apart, the delay in lodging FIR has also not been explained properly. In these circumstances, it is apparent that no case is made out against the applicant. Hence, the applicant be granted regular bail.
4. Learned State counsel opposes the application on this ground that number of criminal cases are registered against this applicant. It is submitted that the prosecutrix was examined on the point being mentally challenged and secondly, positive FSL about presence of human spermatozoa in the vaginal slide of the prosecutrix is a strong evidence against the applicant. Hence, he is not entitled for grant of regular bail.
5. While adopting the arguments advanced by learned counsel appearing on behalf of the State, it is submitted that learned counsel for the Objector that the prosecutrix in this case is suffering from unsoundness of mind. She had been unable to inform about the incident to anyone

for long time and when the things were disclosed by her, the FIR has been lodged. These circumstances by itself were sufficient explanation for delay in lodging FIR in this case. Hence, no case is made out for grant of bail.

6. In reply, learned counsel for applicant submits that the investigation itself shows that the prosecutrix was mentally sound at the time of incident.

Reliance has been placed on the Judgment of Kerala High Court in ***Mrs. Usha Abraham Vs. Abraham Jacob in AIR 1988 Kerala 96*** in which I.Q. level of different grades of mentally unsound persons has explained. Reliance has also been placed on the judgment of Jharkhand High Court in ***Dukhharan Mandal Vs. State of Jharkhand in 2003 Cri. L.J. 4248*** and the judgment of Supreme Court in ***State of Madhya Pradesh Vs. Keshar Singh*** reported in ***2015 AIR SCW 4035***.

7. I have heard the learned counsel for the parties and perused the case diary and the documents placed on record.
8. Complaint was filed by complainant on 1.3.2018 alleging that his daughter i.e. prosecutrix, aged about 16 years had gone to his sister's place and on the fateful day when she was in the agriculture field all alone, the applicant came there, after putting her under threat and taking advantage of her mentally challenged condition committed the offence of rape with her. The prosecutrix was continuously crying after the incident and was not in a position to explain the incident that had taken place with her and ultimately when she disclosed about the incident, FIR was lodged.

9. Considered all the material present in the case diary. The delay in lodging FIR has been explained by the prosecution, however, the explanation offered is satisfactory or not is to be decided by the trial Court. Likewise, the mental condition of the prosecutrix shall also be subjected to scrutiny of the trial Court. All the discrepancies that have been pointed out may be of help to the applicant in his defence but at present on the basis of the material present on record, I am not inclined to grant bail to the applicant.

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

Sd/-

(Rajendra Chandra Singh Samant)

Judge