

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MCRC No. 7552 of 2018**

Omprakash Nishad, S/o Ramayan Nishad (wrongly mentioned as Samaru in the certified copy), aged about 22 years, R/o Village Khapri, Outpost Gidhpuri, Police Station Palari, District Baloda Bazar-Bhatapara (CG).

---- Applicant**Versus**

State of Chhattisgarh, through Station House Officer, Outpost Gidhpuri, Police Station Palari, District Baloda Bazar Bhatapara (CG).

---- Non-applicant

For Applicant : Mr. Anil Gulati, Advocate.

For Non-applicant : Mr. Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****10.10.2018**

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 case diary provided by the counsel for the State in connection with crime No.346/2018 registered at Police Station Outpost Gidhpuri, P.S. Palari, District Baloda Bazar Bhatapara for the offence punishable under Sections 363, 366, 376 r/w 34 of IPC and Section 4 of Protection of Children from Sexual Offences Act.
3. Case of the prosecution, in brief is that on 06.07.2018 the prosecutrix was aged about 17 years old. She is resident of village Gidhpuri. On 06.07.2018 two persons reached in the courtyard of prosecutrix, where she was bathing. They had covered their faces with scarf. They had forcefully given *samosa* to her for eating. They told her that her brother was called her, then she along with her clothes,

ornaments and cash went with them. On the way, she had become unconscious. Her family members told her that the applicant committed sexual intercourse with her.

4. Counsel for the applicant submits that the applicant has not committed any offence. He is innocent and has been falsely implicated in the present case, therefore, he may be released on bail.

5. On the other hand, counsel for the State opposes the prayer for grant of bail to the applicant. However, he further submits that no criminal antecedents reported against the applicant in police case diary.

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

7. In the statement of the prosecutrix recorded under Section 164 of CrPC, she has stated that the said persons have only molested with her.

8. Looking to these facts and circumstances of the case, looking to the statement of the prosecutrix recorded under Section 164 of CrPC; looking to the fact that there is no likelihood of the accused to abscond and tamper the evidence; and the trial is likely to take some more time for its final disposal, this Court is inclined to give benefit of Section 439 of the Cr.P.C. to the applicant.

9. Accordingly, the present bail application filed under Section 439 of the Cr.P.C., is allowed.

10. It is directed that if the applicant furnishes one solvent surety for a sum of Rs.25,000/- along with a personal bond in the like sum to the satisfaction of the concerned Trial Court with the condition that he shall appear before the Trial Court at 11:00 am as and when directed till trial and he would co-operate during the trial, he shall be released on bail.

11. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)
JUDGE

L/-