

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****MCRC No. 8487 of 2018**

Venktesh Kanhaiya (K.Venktesh Kanhaiya) S/o Kolancha Kanna  
Aged About 28 Years R/o Ward No. 12, Gayatri Ward, Geedam,  
P. S. Geedam, District Dantewada, CG

**---- Applicant****Versus**

State of Chhattisgarh Through P. S. Geedam, District Dantewada,  
CG

**---- Respondent**


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| For applicant        | Mr. Vikas Shrivastava, Adv. |
| For Respondent/State | Mr. SK Mishra, PL.          |

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**Hon'ble Shri Justice Sharad Kumar Gupta****Order On Board****29-11-2018**

1. This is first bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court and his no 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. 45/2018 registered at Police Station– Geedam District – South Bastar Dantewada (C.G.) for the offence punishable under Section 363, 366, 354 of the Indian Penal Code, Section 3(C) of the Protection of Children from Sexual Offences Act, and 3(1)(11) of the SC/ST (Prevention of Atrocities) Act, 1989.
3. Case of the prosecution, in brief is that the prosecutrix was about 14 years old. She was resident of village Kasoli. She is member of Scheduled Tribe. Applicant is neither member of Scheduled Caste nor Scheduled Tribe. On 25.07.2018 at Rautpara Haram School applicant Venkatesh Kanhaiya and co-accused Kailash Kaushal forcibly made prosecutrix to sit on the motorcycle. Co-accused Kailash Kaushal caught hold of her neck to breach her modesty. Accused and co-accused Venkatesh were taking her away towards Nagul.
4. Counsel for the applicant argued that the applicant is innocent

and falsely implicated hence he be released on bail.

5. On the other hand, the Panel Lawyer appearing for the State opposed the bail application. However, he submits that no criminal antecedent of the applicant is reported in the police case diary.
6. This Court had granted bail to co-accused Kailash Kaushal vide order dated 4-10-2018 passed in MCRC No. 5978/2018. Case of the applicant Venkatesh Kanhaiya is not severer to that of co-accused Kailash Kaushal who has been granted bail by this Court, rather the case of the applicant is much better than that of co-accused Kailash Kaushal.
7. The certified copy of the order sheet dated 9-10-2018 reflects that the Special Judge, SCST Act, Dakshin Bastar, Dantewada had the knowledge that co-accused Kailash Kaushal has been bailed out by this Court even then he rejected the bail application of the applicant.
8. In **Deepak Kumar Ratre -v- State of Chhattisgarh**, [2001(2) MPHT 89 (CG)] following judicial precedent has been laid down by this Court in para 9 :-

“The grant of application in favour of some of the accused should earnestly persuade a judicial officer to grant bail to the co-accused if the allegations are identical or there are no material differences in the allegations. This Court had been repeatedly saying that if the allegations are identical or almost similar then similar should be treated similarly. I fail to understand as to why a judicial officer should act arbitrarily and in such a whimsical manner in rejecting the application for grant of bail. If the three named persons were granted bail, by any other judicial officer, then so long as the said order is in existence or is not set aside by any revisional court then such order would provide a foundation in favour of the co-accused for his release. It would be hight of the judicial impropriety to say that because some Judge had granted bail to some of the co-accused, the same order would not enure to the benefit of the co-accused before any other Judge.”

9. Looking to the facts and circumstances of the case, it transpires that there is no material difference in the allegation leveled against the applicant and co-accused Kailash Kaushal. Parity demands that if allegations are identical or almost similar or case of the applicant is less severe, then similar or less severe should be treated similarly. Once a co-accused is granted bail then other co-accused whose role is similar or not more severe is also entitled for bail.
10. The Special Judge, SCST Act, Dakshin Bastar, Dantewada did not consider the aforesaid settled legal principle though it should have considered this aspect.
11. It is also notable that it was totally irrelevant that as before passing the bail order by this Court the Court below had rejected the bail application of an accused therefore, it would not allow the subsequent bail application of the same accused or other accused who had been levelled similar allegation.
12. Looking to the above facts and circumstances of the case, the application is allowed. It is ordered that if the applicant furnishes two solvent sureties for a sum of Rs. 25,000/- each along with one personal bond of Rs. 50,000/- to the satisfaction of the trial Court concerned, he be released on bail.
13. A copy of this order be circulated to all the judicial officers of the sub-ordinate courts for future guidance after approval, if necessary.
14. CC as per rules.

**Sd/-**  
**(Sharad Kumar Gupta)**  
**Judge**

