

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 9-4-2019****Delivered on 11-4-2019****MCRC No. 1559 of 2019**

Tej Singh Thakur @ Hitu Thakur S/o Vijay Singh Thakur Aged About 22
Years R/o Village Kalipar Dhobipara, P. S. Parpa Tahsil Jagdalpur,
District Bastar Chhattisgarh

---- Applicant**Versus**

State of Chhattisgarh Through The Police Station Louhandiguda,
District Bastar Chhattisgarh

---- Respondent

For applicant	Mr. Praveen Kumar Tulsiyan, Adv.
For non-applicant/State	Mr. Vikram Dixit, Govt. Adv.

Hon'ble Shri Justice Sharad Kumar Gupta**CAV ORDER**

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.
3. The applicant has been arrested in connection with Crime No. 72/2018 registered in police station Louhandiguda, Distt. Bastar (CG) for offence punishable under Section 366-A, 376, 506 of IPC and Section 4 of the POCSO Act, 2012.
4. Prosecution story in brief is that on 30-5-2018 prosecutrix was below 16 years of age. She is resident of village Alnar. Kunti Thakur is sister of the prosecutrix. Son Singh is the son of Jeth of Kunti Bai. The marriage of Son Singh was solemnized on 30-5-2018. Prosecutrix had gone to village Potiyaguda to attend said marriage. On 30-5-2018 at about 1.00 am applicant took her by enticing to the field and committed forcible sexual intercourse and gave threat to kill her. On 29-11-2018 after examination of the prosecutrix doctor informed that she is carrying pregnancy of 4 month.
5. Counsel for the applicant argued that the applicant is innocent

and has been falsely implicated. He drew my attention on patwari panchnama dated 31-12-2018 wherein it has been mentioned that the marriage of daughter of Dashmu Ram was solemnized on 25-4-2018 and 26-4-2018, barat came from Kothiyaguda, villagers told that they had no idea about the incident of 29/30-5-2018. As per the photocopy of the marriage card which is a part of the bail petition the marriage of daughter of Dashmu Ram was solemnized with Son Singh. He further drew my attention on the true copy of report of medical college Jagdalpur dated 19-11-2018 wherein it has been mentioned that there is fetus was 20 weeks and 4 days old. He further drew my attention on the certified copy of the report of RFSL Raipur dated 27-2-2019 which is part of bail application, expert opined that one alil of DNA extracted from Ex. A (828) fetus of prosecutrix is identical to the one alil of DNA extracted from Ex. B (829) blood sample of prosecutrix. One alil of DNA extracted from Ex. A (828) fetus of prosecutrix is not identical to the one alil of DNA extracted from Ex. C(830) blood sample of applicant. Hence he be released on bail.

6. On the other hand, the State Counsel formally opposed the bail application.
7. The aforesaid contention of counsel for the applicant is the subject matter of scrutiny which this Court cannot do at this stage. It is well settled legal position that while deciding the bail application court cannot consider the merits and demerits of the case. At this stage looking to the statements of the prosecutrix and other prosecution witnesses, looking to the fact that at the time of alleged incident the prosecutrix was below 16 years of age, prima facie this Court finds that it is not a fit case where applicant may be released on bail.
8. Consequently the bail application is rejected.

Sd/-
(Sharad Kumar Gupta)
Judge