

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

RESERVED ON 23-08-2019

DELIVERED ON 26-08-2019

MCRC No. 4060 of 2019

Ajay Singh Rajput, S/o Shri Shyam Singh, aged about 24 years, Driver Private Service, Resident of Village Ghoramar, Police Station Kota, Tahsil Takhatpur, District Bilaspur (CG).

---- Applicant

Versus

State Of Chhattisgarh, through Station House Officer, Police Station Sarkanda, District Bilaspur (CG).

----Non-applicant

For Applicant : Mr. Ashok Verma with Mr. Gajendra Sahu,
Advocates

For non-applicant/State : Mr. Ravi Maheshwari, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta

C.A.V. Order

1. This is second 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. Earlier, first bail application of the applicant was rejected on merits by this Court vide order dated 15.01.2019 passed in M.Cr.C. No.9687 of 2018.
2. The applicant has been arrested in connection with Crime No. 386/2018 registered in police station Sarkanda, District Bilaspur for the offence punishable under Section 376 of Indian Penal Code and Sections 4 & 6 of Protection of Children from Sexual Offences Act.
3. Prosecution story in brief is that the age of the prosecutrix was below 11 years at the time of alleged incident. She is a resident of village Vivekanand Nagar, Bilaspur. On 19.09.2015 at night,

the applicant, who was a driver of family of prosecutrix, took her on the roof of her house, pressed her mouth and committed forcible sexual intercourse with her.

4. Counsel for the applicant submitted that the applicant is an innocent person and has been falsely implicated in the present case. He further submitted that now charge-sheet has been filed. The applicant is in jail since 20.08.2018. The case has been fixed 8 to 9 times for prosecution evidence. Only one police person has been examined till now. Prosecutrix and her parents are not traceable. F.I.R. is delayed by three years. In written complaint, no date and month has been mentioned regarding the alleged incident. There is a contradiction between the statement of prosecutrix recorded under Sections 161 & 164 of Cr.P.C. The father of the prosecutrix had made allegation against the applicant that he stole his Rs.1,76,000/-. To substantiate his argument, counsel for the applicant placed reliance upon the judgment of Hon'ble Supreme Court in the matter of **State, CBI/SPE, New Delhi Vs. Pal Singh and Another** reported in **2001(1) C.G.L.J. 166**. He further placed reliance upon the order of co-ordinate Bench of this High Court in the matter of **Kishor Vs. State of Chhattisgarh** reported in **2001(1) C.G.L.J. 301**. Hence, the applicant may be released on bail.

5. On the other hand, counsel for the State opposed the bail application. However, he further submitted that no criminal antecedent has been reported against the applicant.

6. The aspect of delayed F.I.R. I have already dealt in para No.6 of my earlier order dated 15.01.2019 passed in M.Cr.C. No.9687 of

2018 of the first bail application of the applicant. Now, it is well settled legal principle that while dealing with the bail application, this Court can neither scrutinize the evidence nor appreciate the evidence. At this stage, this Court also cannot examine defence of the applicant.

7. In the case in hand, the trial has begun and two witnesses have been examined also.
8. Looking to the above mentioned facts and circumstances of the case, looking to the seriousness of the offence, looking to the impact of granting bail to the applicant on society, this Court finds that delay in trial is not itself a sufficient ground in the case in hand to release the applicant on bail in the second round of litigation. Thus, the applicant does not get any help from the aforesaid judgment and order. Consequently, the second bail application is rejected.
9. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)
Judge