

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 4072 of 2019**

Mukesh Sahu, son of Madhusudan Sahu (wrongly written as Madhusudar), aged about 21 years, R/o Village Nayapara Khurd, P.S. Pithora, District Mahasamund (CG).

---- Applicant**Versus**

State of Chhattisgarh, through Station House Officer, Police Station Pithora, District Mahasamund (CG).

---- Non-applicant

For Applicant	: Mr. Raghvendra Pradhan, Advocate
For Non-applicant	: Mr. Ashutosh Pandey, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta
Order On Board

02.08.2019

1. This is first bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court.
2. Perused the case diary provided by the counsel for the State in connection with Crime No.197/2018 registered in Police Station Pithora, District Mahasamund for the offence punishable under Section 376 of Indian Penal Code.
3. Case of the prosecution, in brief, is that on 04.10.2018 prosecutrix was aged about 35 years old, is a resident of village Nayapara Khurd. The applicant is her brother-in-law (Devar). On 04.10.2018 at about 22:00 hrs, she was alone in her house, at that time, he entered into her house and took away towards courtyard of her house and committed forcibly sexual intercourse with her. When she shouted, her husband came there and the applicant ran away from there.

4. Counsel for the applicant submitted that the applicant has not committed any offence and has been falsely implicated in the present case. He further submitted that as per statement of prosecutrix recorded under Section 164 of Cr.P.C., her husband had annoyed to her and told that on her call, applicant was come. Her husband sent back her in her paternal house hence she lodged a report against the applicant. These circumstances indicate that prosecutrix was a consenting party.
5. On the other hand, counsel for the State opposed the bail application, however, he submits that no criminal antecedent is reported against the applicant in police case diary.
6. In the statement of husband of prosecutrix recorded under Section 161 of Cr.P.C., it has been mentioned that he had heard the shout of prosecutrix thus he went to his house.
7. Looking to the facts and circumstances of the case, at this stage, prima facie it cannot be said that prosecutrix was a consenting party, looking to the seriousness of the offence and looking to the impact of granting bail to the applicant on society, this Court is not inclined to give benefit of Section 439 of the Cr.P.C. to the applicant. Consequently, the bail application is rejected.
8. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)
JUDGE

L/-