

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 4066 of 2019**

1. Sitaram S/o Kabari Markam Aged About 25 Years , District : Kawardha (Kabirdham), Chhattisgarh
2. Saroj S/o Dulashram Paraste Aged About 23 Years R/o Village Devsara, Police Station Kukdur, District Kabirdham Chhattisgarh
3. Durgesh S/o Mohit Yadav Aged About 21 Years R/o Village Devsara, Police Station Kukdur, District Kabirdham Chhattisgarh.

---- Applicants

Versus

State Of Chhattisgarh Through Station House Officer, Police Station Kukdur, District Kabirdham Chhattisgarh.

---- Respondent

For the Applicants	:	Shri Dharmesh Shrivastava, Advocate
For the State	:	Shri Ravi Maheshwari, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta

Order On Board**22/08/2019**

1. Informant is the prosecutrix, on behalf of prosecutrix allegedly father Budhsingh Sonwani is present. After putting some questions this Court is satisfied that the person who is present in the Court is father of the prosecutrix.
2. This is the first bail application under Section 439 of the CrPC and there is no bail application is pending before any other Court.
3. Perused the case diary provided by the learned counsel for the State in connection with the Crime No.22/2019 registered at Police Station Kukdur, District Kabirdham (C.G.) for the offence punishable under Sections 363, 366A, 376D of IPC and Section 4,6 of POCSO Act.
4. Case of the prosecution, in brief is that on 07/03/2019 prosecutrix was below 16 years of age. She is resident of village Putputa. On 07/03/2019 at about 7.00 p.m. she was returning back from the grocery shop after purchasing the chocolate. Applicant No.1 Sitaram and co-accused Kashiram came near to her, took her forcefully by

motorcycle to forest. In forest applicant No. 2 Saroj, Applicant No. 3 Durgesh, co-accused Sonu and Keshav reached there. They committed forcible sexual intercourse with her one by one.

5. Counsel for the applicants submitted that they are innocent and falsely implicated in the present case. He further submitted that lady doctor did not find any internal injury on the body of the prosecutrix, she had not found any sign of gang-rape, test identification parade is not properly conducted, in the Court she had stated that she was tutored by Police official. He drew my attention on para Nos. 1, 4, 6, 7, 8,9 and 10 of certified copy of the statement of PW-1 Dr. Pushpa Kharsan. He also drew my attention on para Nos. 7,8, 9, 18, 19, 22, 24 and 25 of the certified copy of the statement of PW-2 prosecutrix, therefore they may be released on bail.
6. On the other hand, counsel for the State opposes the bail application. He further submits that no criminal antecedents against the applicants is reported in the police case diary.
7. Representative of informant Budhsing Sonwani objected on releasing the applicants on bail.
8. This is well settled legal position that at the time of dealing with bail application Court neither can scrutinize nor appreciate the evidence. The Court also does not touch merits and demerits of the case what is to be seen the *prima facie* case.
9. Looking to the above mentioned facts and circumstances of the case, *prima facie* materials available on record against the applicants, looking to this fact that at the time of alleged incident prosecutrix was below 16 years of age, looking to the seriousness of the alleged offence, looking to the impact of granting bail to the applicant on society, this Court is not inclined to release the applicants on bail. Consequently, bail application is rejected.

Sd/-
(Sharad Kumar Gupta)
Judge