

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 4535 of 2019**

Kamta Prasad Mayaram Yadav, aged about 40 years, S/o Mayaram Yadav,
R/o village Tipwan, Police Station Palari, District Balodabazar Bhatapara (CG).

---- Applicant**Versus**

State of Chhattisgarh, through Station House Officer, Police Station Palari,
District Balodabazar Bhatapara (CG).

---- Non-applicant

For Applicant	: Mr. Shobhit Mishra, Advocate
For Non-applicant	: Mr. Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****27.08.2019**

1. This is second 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.559/2018 registered at Police Station Palari, District Balodabazar Bhatapara for the offence punishable under Sections 376 & 506 of Indian Penal Code.
3. The first bail application of the applicant was rejected on merits by this Court vide order dated 23.01.2019 passed in M.Cr.C. No.10074/2018 considering *prima facie* case against the applicant.
4. Case of the prosecution, in brief, is that on 17.10.2018 the prosecutrix was aged about 20 years and is a resident of village Tipawan. Applicant is her father-in-law. On 17.10.2018 at about 10:00 a.m. at village Tipawan she was picking cow dung. Applicant caught hold her, took her forcibly inside the room and had committed forcible sexual intercourse with her.
5. Counsel for the applicant submitted that the applicant has no criminal background and he is an innocent person. He further submitted that there is a delay in lodging the F.I.R. There are some omission and contradiction between F.I.R. and statement of the prosecutrix recorded

in the trial Court. The prosecutrix is mentally ill, when this fact came in the notice of her in-laws, she falsely implicated to the applicant in the case. In support of his case, he drew my attention on the paragraphs No.4, 5, 6, 7, 9, 10, 11, 12, 13 & 14 of certified copy of statement of prosecutrix. Para No.5 of certified copy of statement of Ramesh (P.W.-5), which is a part of bail application.

6. On the other hand, counsel for the State opposed the bail application. However, he submitted that previously no criminal antecedent is reported against the applicant.

7. Delay in lodging the F.I.R. is not sufficient to say at this stage that no *prima facie* case is made out against the applicant. Now, it is well settled legal principle that while dealing with the bail application, this Court can neither scrutinize nor appreciate the evidence. It is also well settled legal principle that while deciding the bail application, this Court can neither touch the merit nor demerit of the case. It is also well settled legal principle that at this stage the defence of the accused cannot be considered.

8. Looking to the above mentioned facts and circumstances of the case, this Court finds that there is no change in the circumstances of the case on the strength of which the applicant be released on bail in the second round of litigation. Consequently, the second bail application is rejected.

9. Certified copy as per rules.

Sd/-
(Sharad Kumar Gupta)
JUDGE