

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 13-9-2019****Delivered on 16-9-2019****MCRC No. 4389 of 2019**

- Smt. Nisha Tandon, W/o Laxmikant Tandon, aged about 33 years, R/o Mahasati Ward, Bhatapara, P.S. Bhatapara District – Baloda Bazar-Bhatapara (C.G.)

---- Applicant**Versus**

- State of Chhattisgarh Through Police Station Bhatapara (Urban), District – Baloda Bazar – Bhatapara (C.G.)

---- Non-applicant

For applicant	Mr. Sachin Singh Rajput and Mr. Sharad Mishra, Adv.
For non-applicant/State	Mr. Suyash Dhar, P.L.

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. The applicant has been arrested in connection with Crime No. 204/2019 registered in police station Bhatapara (Urban), Distt. Baloda Bazar (CG) for offence punishable under Section 376(D), 506 of IPC and Section 04, 06 of Protection of Children from Sexual Offences Act, 2012.
3. Prosecution story in brief is that prosecutrix is about 18 years old and resident of Bhatapara. She is a member of scheduled caste. At the time of alleged incident she was studying in Hyderabad. Applicant is her maternal aunt. Her parents are living separately due to matrimonial disputes. She had come to her aunt's house. On 15.04.2019 in night applicant sent her on the first floor saying that she would render the service to her maternal uncle the

husband of applicant and his friend Nirmal Sindhi. Her maternal uncle and Nirmal Sindhi gave her cold drink, after consuming which she became unconscious. On the next day in the morning applicant awoke her. Prosecutrix found that her clothes were changed, there was pain in her private parts and her underwear was blood stained. Applicant asked her whether there is a pain on her abdomen. When she replied positively, applicant gave her medicine. On 16.04.2019 she telephoned to her cousin brother Rajesh resident of Hyderabad and narrated him the incident. Her maternal uncle had threatened her that he will get killed her father, thus she did not tell anything to her parents. On 27.05.2019 she lodged report in police station.

4. Counsel for the applicant argued that the applicant is innocent and has been falsely implicated, he further submitted that there is variation between her statements recorded under Section 161 and 164 Cr.P.C., FIR is delayed. She had not narrated the incident immediately after alleged incident to her parents. In the case in hand Section 376(2)(g), 34 IPC do not attract because applicant is female. He further submitted that Section 109 IPC is also not attracted in the case in hand. Hence she be released on bail.
5. Counsel for the applicant to buttress his argument placed reliance on the judgment of High Court of Bombay in the matter of **Sou. Laxmi Bhausaheb Gawade vs. State of Maharashtra {2015 SCC online Bob. 8132}**, on the judgments of Hon'ble Supreme Court in the matter of **Priya Patel vs. State of M.P. and Another {(2006) 6 SCC 263}** and

in the matter of **State of Rajasthan vs. Hemraj and Another** {(2009) 12 SCC 403} where in following judicial precedent has been laid down :-

“ A woman cannot be prosecuted for the offence punishable under Section 376 (2)(g) of the IPC, even if she facilitates the act of rape. The explanation (1) of Section 376 (2) relates to the intention to commit rape. A woman cannot be said to have an intention to commit rape.”

6. On the other hand, the State Counsel opposed the bail application, however, he further submitted that there is no criminal antecedent against the applicant.
7. Counsel for the respondent State placed reliance on the judgment of Hon'ble Supreme Court in the matter of **Om Prakash Vs. State of Haryana** {(2015) 2 SCC 84} wherein Hon'ble Supreme Court has laid down following judicial precedent :-

“Where female accused sent the prosecutrix in her house to take something where other coaccused committed gang rape with her. The act of female accused amounts intentionally aids to commit gang rape by other coaccused. She is an abettor under Section 108 of the IPC and committed the offence punishable under Section 109 of the IPC.”

8. In the case in hand delay in lodging FIR prima facie has been explained. Moreover, delay in lodging FIR is not itself a ground to release the accused on bail.
9. Looking to the aforesaid judicial precedents laid down by Hon'ble

Bombay High Court and Hon'ble Supreme Court in the matter of **Sou. Laxmi Bhausahab Gawade (Supra)**, **Priya Patel (Supra)**, **Hemraj (Supra)** respectively, this Court finds that prima facie no case is made out against the applicant under Section 376(2)(g), 34 IPC.

10. Looking to the above mentioned facts and circumstances of the case, looking to the aforesaid judicial precedent laid down Hon'ble Supreme Court in the matter of **Om Prakash (Supra)** this Court finds that prima facie a case under Section 109 IPC is made out against the applicant as she intentionally aided the act of gang rape.

11. Looking to the above mentioned facts and circumstances of the case, looking to the seriousness of the offence and impact of granting bail to the applicant on the society, the bail application of the applicant is rejected.

Sd/-
(Sharad Kumar Gupta)
Judge