

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 4410 of 2019**

- Ramchand Gandharv S/o Fakirchand Gandharv Aged About 40 Years R/o Ward No. 25, In Front Of Anil Press, Dallirajhara, Police Station - Dallirajhara, District - Balod Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh

---- Applicant**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station - Dallirajhara, District - Balod Chhattisgarh., District : Balod, Chhattisgarh

---- Non-applicant

For Applicant : Shri B.P. Singh, Advocate.

For Non-applicant : Shri Suyash Dhar, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****02.09.2019**

1. This is first bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court and no other bail application is pending before any other Court.
2. Perused the case diary provided by the learned counsel for the State in connection with crime No. 127/2019 registered at Police Station – Dallirajhara, District – Balod (C.G.) for the offence punishable under Sections 450, 376, 506 of the Indian Penal Code.
3. Case of the prosecution, in brief is that prosecutrix is about 35 years old. She is resident of village Rajhara. In the month of March, 2018 applicant reached in her house having sword, threatened her and committed sexual intercourse with her. She orally informed to the police station where the FIR was not lodged and a copy of information of Non-cognizable Offence was given to her, a meeting of community was also

held, thereafter, he repeatedly committed sexual intercourse with her.

4. Learned counsel for the applicant argued that the applicant has no criminal background, he is innocent, FIR is delayed by more than one year, prosecutrix has lodged report against his wife, he drew my attention on para No. 8 of the certified copy of the judgment dated 26.07.2018 passed by the JMFC, Balod which is part of the bail application, he further submitted that in Matri Avam Bal Suraksha Card prosecutrix intimated name of the applicant as father of the child, in these circumstances, he shall be released on bail.

5. On the other hand, learned counsel for the State opposes the bail application, however, submits that there is no criminal antecedent against the applicant.

6. This is well settled position that at the time of considering bail application, Court neither can scrutinize facts nor can appreciate evidence which can be done by the trial Court. This is also recognized legal position that at the time of disposal of the bail application defence cannot be looked into.

7. The delay in FIR is a considerable factor but other circumstances, prima facie materials available on record against accused are also considerable factors.

8. Looking to the above mentioned facts and circumstances of the case, looking to the prima facie materials available on record, looking to the seriousness of the offence, looking to the gravity of the offence, looking to the impact (At this stage counsel for the applicant submits that he wants to withdraw this bail petition. Because this Court has dictated more than half of the order, the Court has opened its mind in open Court, at this stage the prayer of the counsel for the applicant is disallowed) (Counsel for the applicant further submits that this Court has

granted bail in thousand cases where prosecutrix was below 18 years of age, in the case in hand the prosecutrix is an adult lady, she was a consenting party thus he was under impression that bail would be granted, now he will send the matter to the Hon'ble Supreme Court challenging this order) of granting bail to the applicant on society, this Court is not inclined to give benefit of Section 439 Cr.P.C. to the applicant.

9. Consequently, the present bail application is rejected.

Sd/-

(Sharad Kumar Gupta)
JUDGE