

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MCRC No.4569 of 2019**

Ajit, son of Ramkeshwar, aged about 28 years, R/o Village Amgasi, P.S. Lakhanpur, District Surguja (CG).

---- Applicant**Versus**

State of Chhattisgarh, through Station House Officer, Police Station Lakhanpur, District Surguja (CG).

---- Non-applicant**AND****MCRC No.4579 of 2019**

1. Rameshwar, son of Naresh Kanwar, aged about 22 years.
2. Manbodh, son of Birchha Kenwat, aged about 22 years.
3. Lavkesh @ Lokesh son of Sangram Singh Kanwar, aged about 23 years.
4. Divyansh, son of Sangram Kanwar, aged about 21 years.

All are resident of Village Amgasi, Police Station Lakhanpur, District Surguja (CG).

---- Applicants**Versus**

State of Chhattisgarh, through Station House Officer, Police Station Lakhanpur, District Surguja (CG).

---- Non-applicant

For Applicants : Mr. Sumit Singh Rathore and Ms. Rashmi Sen, Advocates
For Non-applicant : Mr. Vaibhav Kartike Agrawal, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta
Order On Board

28.08.2019

1. Prosecutrix herself is an informant. Her representative allegedly her mother Smt. Munni is present before this Court. After putting some inquiries from her, this Court satisfied that Smt. Munni is representative of the informant/prosecutrix, who is present in the Court.

2. Above mentioned two bail applications arise out of a common Crime No.128/2018 registered at Police Station Lakhanpur, District Surguja for the offence punishable under Sections 323, 506, 363, 366, 376 (घ) of Indian Penal Code and Sections 4, 5, 5३/6 of Protection of Children from Sexual Offences Act, therefore, they are being heard analogously and decided by this common order. M.Cr.C. No.4569/2019 is the first bail application and M.Cr.C. No.4579/2019 is the second bail application filed under Section 439 of CrPC.
3. The first bail application of the applicants namely Rameshwar, Manbodh, Lavkesh and Divyansh was rejected on merits by this Court vide order dated 04.04.2019 passed in M.Cr.C. No.9190/2018.
4. Prosecution story in brief is that as per school register the date of birth of prosecutrix is 02.02.2004. On alleged date of incident i.e. 01.08.2018 she was below 15 years of age. She is a resident of village Bansipur. On 01.08.2018 the applicant- Rameshwar was going to leave her to road by motorcycle. On the way he stopped his vehicle and told that petrol has finished. He talked his associates, four persons reached there by motorcycle. Applicant Rameshwar and four other persons committed forcible sexual intercourse with her one by one. During the Test Identification Parade, she identified the applicants Manbodh, Lavkesh, Divyansh and Ajit.
5. Counsel for the applicants submitted that the applicants are innocent and have been falsely implicated in the present case. He further submitted that during the statement recorded by the trial Court, prosecutrix told her age 20 years. She does not support the prosecution case, turned hostile. He further submitted that there are contradiction between her statement recorded under Section 161 of CrPC and court statement. In support of his case, he drew my attention on the certified copy of statement of P.W.-3 prosecutrix, which is a part of bail application. Hence, the applicants may be released on bail.
6. Counsel for the State opposed the bail application. However, he submitted that no criminal antecedent is reported against the applicants.
7. The representative of informant/prosecutrix namely Smt.Munni submitted that she does not know as to whether the applicants may be released on bail or not.

8. During the statement of prosecutrix, the Court has estimated the age of prosecutrix is 20 years. Mere on the estimation *prima facie* at this stage it cannot be said that at the time of alleged incident prosecutrix was more than 16 years. *Prima facie* looking to the entry of date of birth of the prosecutrix, this Court finds that at the time of alleged incident prosecutrix was below 16 years of age. This is well settled legal principle that at the time of dealing the bail application, this Court can neither scrutinize the evidence nor appreciate the evidence. This can be done only by the trial Court at the time of final disposal of the bail application, the Court cannot look into the defence of the accused.
9. As per certified copy of statement of prosecutrix, she had made statement in examination-in-chief that she does not know the present applicants, turned hostile. She further says during cross-examination by the Public Prosecutor, this is a wrong that the applicants committed sexual intercourse with her one by one. These circumstances are sufficient to enlarge the applicants namely Rameshwar, Manbodh, Lavkesh and Divyansh on bail in the second round of litigation. **Consequently, their second bail application (M.Cr.C.No.4579/2019) is allowed.**
10. Looking to the above mentioned facts and circumstances of the case, looking to the material available on record, looking to the certified copy of the statement of prosecutrix, looking to the fact that there is no likelihood of the applicant Ajit to abscond and tamper the evidence; and the trial is likely to take some more time for its final disposal, this Court is inclined to give benefits of Section 439 of the CrPC to the applicant Ajit. **Accordingly, the bail application (M.Cr.C. No.4569/2019) is allowed.**
11. It is directed that in case, each of the applicants i.e. Ajit, Rameshwar, Manbodh, Lavkesh and Divyansh furnish one solvent surety for a sum of Rs.25,000/- each along with a personal bond in the like sum to the satisfaction of the concerned Trial Court with the condition that they shall appear before the Trial Court at 11:00 am as and when directed till trial and they would co-operate during the trial, they shall be released on bail.
12. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)
JUDGE

L/-