

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 4680 of 2019**

- Jitendra Mandal S/o Late Baburam Mandal Aged About 55 Years R/o Bapu Nagar, Sector-11, Zone-2, Khursipar, Bhilai, Tahsil And District- Durg, Chhattisgarh, District : Durg, Chhattisgarh

---- Applicant**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station- Khursipar, District- Durg, Chhattisgarh, District : Durg, Chhattisgarh

---- Non-applicant

For Applicant : Shri S.K. Agrawal, Advocate.

For Non-applicant : Shri Praveen Shrivastava, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****13.08.2019**

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. 146/2019 registered at Police Station – Khursipar, District – Durg (C.G.) for the offence punishable under Sections 376, 450 of the Indian Penal Code.
3. Case of the prosecution, in brief is that prosecutrix is about 23 year old. She is resident of Kurshipar. On 01.05.2019 between 19:00 hours to 20:00 hours applicant entered in the house of the prosecutrix, closed the doors, touched her body parts, penetrated his penis into her vagina.
4. Learned counsel for the applicant argued that as per the statement of

the prosecutrix recorded under Section 164 Cr.P.C. allegedly penis was not inserted in the vagina of the prosecutrix, as per the contents of the said statement only attempt was made, as per the medical report no injury was found on the body of the prosecutrix. There was a dispute between father of the prosecutrix and applicant, thus the applicant has been falsely implicated, the applicant has no criminal background, he is innocent, therefore, 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. As per the statement of the prosecutrix recorded under Section 164 Cr.P.C. it cannot be said that allegedly only attempt was made.

7. If the medical evidence does not support the prosecution case, prima facie it would not falsify the prosecution case.

8. This is well settled legal position that while dealing the bail application, Court cannot see the defence, it can be seen during the appreciation of the evidence. Thus, at this stage prima facie it cannot be said that the applicant has been falsely implicated in the case due to rivalry.

9. Looking to the facts and circumstances of the case, looking to the materials available on record against the applicant, looking to the seriousness of the offence, looking to the impact of granting bail to the applicant on society, the present bail application is rejected.

10. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)
JUDGE