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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Cr.) No. 539 of 2019**

Harishankar Mihaulia S/o Shri Khemchand Mihaulia Aged About 43 Years
R/o Bajrang Para, Kohka Near Karma Bhawan, Street 11, Kohka Bhilai,
Police Station Supela, District Durg Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattigarh Through Its Secretary, Department Of Home (Police), Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Inspector General Of Police Division Durg, District Durg Chhattisgarh.
3. Superintendent Of Police District Durg Chhattisgarh.
4. Station House Officer Police Station Pulgaon, District Durg Chhattisgarh.
5. Gendi Bai Dheemar W/o Ishwarideemar Aged About 28 Years R/o Village Nagpura, Near Bhatapara Chowk, Police Station Pulgaon, District Durg Chhattisgarh.
6. Lekh Pal Singh Chouhan Principal, Primary School Pronnat Prathamik Shala, Village Nagpura, District Durg Chhattisgarh.
7. Laxmi Sahu Teacher, Primary School Pronnat Prathamik Shala, Village Nagpura, District Durg Chhattisgarh.

---- Respondents

For the Petitioner	: Shri A.K. Raizada, Advocate with Shri Dhiraj Kumar Wankhede, Advocate.
For the Respondents/State	: Shri Devendra Pratap Singh, Dy.A.G.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****02.08.2019**

Heard.

1. This petition has been brought under Article 226 of the Constitution of India praying for issuance of appropriate writ.

2. It is submitted that the petitioner has been falsely implicated in the case registered against him as Crime No. 8 of 2019 in police station Pulgaon, District Durg for commission of offences under Section 376 of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act, 2012. The grievance of the petitioner is that fair investigation has not been conducted. The reason for which is that the petitioner is incapable of committing the offence alleged against him. The petitioner is permanently disabled person regarding which certificate is filed as Annexure-P/2. Apart from that, his body weight is only 30 kg when he was examined by the jail doctor. For committing an offence of rape, a lot of physical power and physical effort is needed, therefore, for the reasons of the disablement of the petitioner and being underweight it is improbable that he could have engaged in such a physical exercise to commit the crime.

The FIR lodged and the statements made by the witnesses are inconsistent. In fact, it had been a conspiracy of the colleagues, namely, Lekh Pal Singh Chouhan and Laxmi Sahu who had been jealous because of the appreciation and the popularity the petitioner received in his work field. FIR is delayed by almost one month and in between the complaint against the petitioner was enquired into by Block Education Officer. The report of which attached as Annexure-P/8 does not mention the commission of offence of rape. Hence, on these grounds and on the basis of these submissions, the issuance of appropriate directions is sought for impartial investigation of the case registered against the petitioner.

3. Learned State counsel opposed the grounds raised in the petition and submits that during investigation the petitioner was examined by the doctor who has given a report that the petitioner is competent to perform sexual intercourse. The investigation in this case has been completed and the charge-sheet has been filed, therefore, no question arises regarding the reinvestigation of the case. Hence, it is prayed that this petition be dismissed at the motion stage.

4. In reply, it is submitted by counsel for the petitioner that the petitioner is incapable of performing forceful sexual intercourse, therefore, the prosecution against him is totally misconceived.

5. Heard counsel for both the parties and perused the documents.

6. Perused the documents filed alongwith petition and considered the submissions made by counsel for both the parties. The fact remains that the result of the investigation has been positive against the petitioner, regarding capability and regarding the commission of offence of rape. The grounds raised that the act alleged is impossible on the part of the petitioner, is a ground of defence. It shall be open to the petitioner to raise all the grounds which he has raised in this petition, as grounds of his defence and contest the case in accordance with the right to defence available with him.

7. As the case is now before the trial Court and the petitioner is facing trial, he has all the opportunities available to substantiate his grounds of defence and disprove the charge against him, therefore, for the reason that the opportunity of defence is not lost to the petitioner. Hence, I find no

reason to entertain this petition and exercise the jurisdiction under Article 226 of the Constitution of India.

8. Accordingly, the petition is not fit to be admitted which is dismissed at the motion stage.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi