

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.CR.C. No. 5136 of 2019**

Josef Khalkho, S/o. Juglal, Aged About 39 Years, R/o. Chanvaridand, Ward No. 7, Thana- Manendragarh, District- Koriya, Chhattisgarh.

---- Applicant**Versus**

The State Of Chhattisgarh, Through : The Collector, District- Koriya-Baikunthpur, Chhattisgarh.

---- Respondent

For Applicant	: Mr. Parag Kotecha, Advocate
For Respondent/State	: Mr. Roshan Dubey, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order On Board****18/09/2019**

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicant, who has been arrested in connection with Crime No.37/2018, registered at Police Station –Khadgawa, District – Koriya (C.G.) for the offence punishable under Section 376 (2) (N), 506 of the Indian Penal Code.
2. It is submitted by the learned counsel for the applicant that the applicant has been falsely implicated in this case. No case is made out against the applicant according to the material present in the case diary. The applicant is in jail since 29.03.2019. The prosecutrix is major of age above 18 years. The conduct of the prosecutrix in accompanying the applicant to various places itself shows that she was a consenting party in the physical relation that took place, therefore, no offence is made out. Therefore, it is prayed that the applicant be granted regular bail.

3. On the other hand, learned counsel for the State opposes the bail application and the submissions made in this respect. It is submitted that there is clear allegation of the prosecutrix that the applicant has committed rape with her, therefore, the application be rejected.
4. I have heard the learned counsel for both the parties and perused the case diary.
5. According the prosecution case on the date of incident, the applicant on the pretext that he will get the prosecutrix labour work, took her on his motor cycle to the place of his sister, where while staying there, he raped her and also threatened to kill her. Thereafter, the applicant did not release the prosecutrix from his custody and took to the place of his brother, where he again raped her. In the morning of the next day, the prosecutrix informed about the incident to her brother, thereafter, the FIR has been lodged.
6. Considered on the submissions made and the contents of the case diary. Looking to the statement of the prosecutrix, it appears that it can not be said that she had been a consenting party in the incident that has taken place, hence for this reason, this Court is of the opinion that present is not a fit case, in which, the applicant should be enlarged on regular bail.
7. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is rejected.

Sd/-
(Rajendra Chandra Singh Samant)
Judge