

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**RESERVED ON 4-9-2019****PRONOUNCED ON 5-9-2019****MCRC No. 5421 of 2019**

Gourav Singh S/o Late Shri Rameshwar Singh Aged About 36
Years R/o Aayudh Nirman Colony Katni, Police Station Madhav
Nagar, Tahsil Madhav Nagar, District Katni Madhya Pradesh, MP

---- Petitioner**Versus**

State of Chhattisgarh Through Station House Officer, Police
Station Sakri, Civil And Revenue District Bilaspur CG

---- Respondent

For applicant

Mr. Pushpendra Singh Baghel, Adv.

For non-applicant/State

Mr. Suyash Dhar, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta**CAV Order**

1. This is first third bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court. Earlier his first bail application was rejected on 13-3-2019 in MCRC No. 1426/2019 considering prima facie case against him. His second bail application was rejected on 16-5-2019 in MCRC no. 3094/2019 considering prima facie case against him. His no bail application is pending before any other court.
2. The applicant has been arrested in connection with Crime No. 38/2019 registered in police station Sakri, Distt. Bilaspur (CG) for offence punishable under Section 376, 384, 509(b) of the IPC.
3. Prosecution story in brief is that prosecutrix is aged about 40 years and a resident of Uslapur, Bilaspur. She is a member of Scheduled Tribe. Applicant is neither member of Scheduled Caste nor Scheduled Tribe. He introduced himself as Hemant Toppo to the Prosecutrix. He repeatedly committed sexual intercourse with her on pretext of marriage. Later, he disclosed before the prosecutrix that actually his name is Gourav Singh. Later on, she came to know that he is already married man. Thereafter she refused to continue physical relationship with

him. He threatened her that he will viral her intimate photographs and demanded Rs. 10 lacs from her. Thereafter she lodged an FIR against him.

4. Counsel for the applicant argued that the prosecutrix is not appearing before the trial Court. Prosecution has not produced any document which indicates that applicant is already married person. She herself used the applicant to fulfill her lust. FIR is delayed by 1 year. He is in jail for last 7 months. No certificate under Section 65-B of the Evidence Act has been filed. He drew my attention on some photographs which are part of the bail application. To substantiate his argument he placed reliance on the judgment of the Hon'ble High Court of Delhi in the matter of **Rohit Tiwari -v- State** dated 24-5-2016 passed in CRLA No. 928/2015. He also placed reliance in the judgment of Hon'ble Supreme Court in the matter of **Arjun Pandit Rao Khotkar -v- Kailash Kushan Rao Gorantyal** dated 26-7-2019 passed in Civil Appeal No. (s) 2085-20826/2017, and **Pramod Suryabhan Pawar -v- State of Maharashtra and another** dated 21-8-2019 passed in Cr.A. No. 1165/2019.
5. On the other hand, the State Counsel opposed the bail application. He further submits that no criminal antecedent has been reported against applicant in the police case diary.
6. Prima facie it appears that duration of offences is from 1-8-2018 to 16-2-2019. FIR was lodged on 16-2-2019. Thus, prima facie it does not appear that there is any delay in lodging the FIR.
7. This is well settled legal position that while dealing with the bail application Court can neither scrutinize the evidence nor appreciate the evidence. This is also well settled legal position that at the time of deciding bail application Court cannot look into the defence of the accused.
8. In the above cited judgments, no legal principal has been laid down regarding bail matter. The aforesaid judgment of Hon'ble Delhi High Court in the matter of **Rohit Tiwari** (supra) relates to final disposal of the matter after the appreciation of the evidence. The aforesaid judgment of Hon'ble Supreme Court in the matter of **Pramod Suryabhan Pawar** (supra) relates to the disposal of

the petition filed under Section 482 of the Cr.P.C. Moreover, in the case in hand, situation is different. In the case in hand, prosecutrix is not married woman. In the case in hand, prima facie it does not appear that she knew that some obstacles are there on the way of marriage. Prima facie it appears that appellant repeatedly committed sexual intercourse with her on pretext of marriage. Prima facie it also appears that at the time of such promise he was already married, which was not in the knowledge of the prosecutrix, he concealed this fact from her. Prima facie, it appears that offence punishable under Section 376 of the IPC is made out against him. In these circumstances, this Court finds that applicant does not get any help from the aforesaid judgments in the matter of **Rohit Tiwari** (supra) and **Pramod Suryabhan Pawar** (supra) and aforesaid photographs also.

9. Looking to the above mentioned facts and circumstances of the case, looking to the seriousness of the alleged offence and also the impact of granting bail to the applicant on the society, this Court is not inclined to grant bail to the applicant, the application is rejected. However the trial Court is directed to ensure the appearance of the prosecutrix to record her statement and expedite the trial.

Sd/-
(Sharad Kumar Gupta)
Judge