

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 5470 of 2019

1. Ku. Injoriya, D/o Shri Ram Prasad, Aged About 21 Years, R/o Village Pondidih Chapar, Harijan Para, Ward No. 03 Tehsil & Police Station Khadgawan, District- Koriya, Chhattisgarh.

2. Ambikeshwar Singh@ Ambika Singh, S/o Late Awadh Bihari Singh, Aged About 59 Years, Caste Kushwaha, R/o Village Chanwaaridand, Tehsil And Police Station Khadgawan, District- Koriya, Chhattisgarh.

---- Applicants

Versus

- State Of Chhattisgarh Through P.S. AJK, Baikunthpur, District- Koriya, Chhattisgarh.

---- Respondent

&

MCRCA No. 1335 of 2019

- Dr. Rakesh Sharma, S/o Late Shri C. S. Sharma Aged About 62 Years Occupation-Doctor, Sharma Hospital, Mahalpara Road, Baikunthpur, District-Koriya, Chhattisgarh.

---- Applicant

Versus

- State of Chhattisgarh Through Station House Officer, Ajak Baikunthpur, District-Koriya, Chhattisgarh.

---- Respondent

For Applicants	:Mr. Sunil Otwani with Mr. Pawan Shrivastava , Advocates in MCRC No.5470 of 2019. Mr. Y.C. Sharma with Mr. Anil Gulati, Advocates in MCRCA No.1335 of 2019.
For Respondent/ State For Objector	:Mr. Neeraj Pradhan, Panel Lawyer. :Mr. Soumitra Kesharwani, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

03/10/2019

1. Since the above bail applications are similar in nature and arise out of the same chain of incidents, they are being heard and decided together by this common order.
2. Applicant has filed M.Cr.C(A) Nos.1335/2019 seeking anticipatory bail as he apprehend his arrest in connection with Crime No.16/2019 registered at Police Station-Ajak, Baikunthpur, District-Koriya for the offence punishable under Sections 115, 506, 376(2) (३)(च) r/w 34, 313 of the Indian Penal Code (for short 'IPC') and Section 4, 5(३), 6 of Protection of Children from Sexual Offences Act and section 3(2)(V) of Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act.
3. Applicants have filed M.Cr.C. No.5470/2019 seeking regular bail as they have been arrested in connection with Crime No.16/2019 registered at Police Station-AJK, Baikunthpur, District-Koriya, Chhattisgarh for the offence punishable under Sections 376(2)(n)(f) r/w of 34 of the Indian Penal Code (for short 'IPC'), sections 4, 5(n) & 6 of POCSO Act, 2012, & 3(2)V of SC/ST (Prevention of Atrocities)Act, 1989.
4. Since the above bail applications are similar in nature and arise out of the same chain of incidents, they are being heard and decided together by this common order.
5. Applicant in M.Cr.C (A) Nos.1335/2019 has filed this application seeking anticipatory bail as he apprehends his arrest in connection with Crime No.16/2019 registered at Police Station-AJAK, Baikunthpur, District-Koriya for the offence punishable under Sections 115, 506,

376(2) (द)(च) r/w 34, 313 of Indian Penal Code (for short 'IPC') and Section 4, 5(द), 6 of Protection of Children from Sexual Offences Act and section 3(2)(V) of Scheduled Caste & Scheduled Tribe(Prevention of Atrocities) Act.

6. Applicants in M.Cr.C. No.5470/2019 have filed this application seeking regular bail as they are in custody in connection with Crime No.16/2019 registered at Police Station-AJAK, Baikunthpur, District-Koriya, Chhattisgarh for the offence punishable under Sections 376(2) (n) (f) r/w of 34 of the Indian Penal Code (for short 'IPC'), Sections 4, 5(n) & 6 of the POCSO Act, 2012, & Section 3 (2) (v) of SC/ST (Prevention of Atrocities) Act, 1989.
7. Learned counsel for applicants submitted that applicants have been falsely implicated in this case. FIR in this case has been lodged after a lapse of 10 months. There is no evidence to show that the prosecutrix had conceived and she had undergone an abortion, as stated by prosecutrix. The whole story of the prosecution is imaginary and without any substance. It is submitted that applicant No. 1 Ku. Injuriya being a lady is entitled for bail, whereas applicant No.2 Ambikeshwar Singh in MCRC No. 5470 of 2019 also makes the prayer for grant of bail on the ground of his health condition. This applicant was referred to Cardiology Department for evaluation and he has been advised for valve replacement surgery by Dr. Ambedkar Memorial Hospital, Raipur making it clear that there is no such facility available in the said hospital and he was advised to go to some higher medical center.
8. It is submitted by learned counsel on behalf of applicant Dr. Rakesh Sharma that there is no specific allegation against this applicant that he had conducted the D&C procedure on the prosecutrix, which is a

procedure for abortion, but there is only mention of 'Sharma Hospital' which is not sufficient identification of this applicant, therefore, it is prayed that this applicant be granted anticipatory bail.

9. Learned State counsel opposes the bail application and submissions made in this respect. It is submitted that there is clear allegation made by the prosecutrix in her statement based on which FIR has been lodged. Applicant Ambikeshwar Singh in MCRC No.5470 of 2019 and Dr. Rakesh Sharma in MCRC No.1335 of 2019 have criminal antecedents, therefore, they are not entitled for grant of regular or anticipatory bail.

10. Learned counsel for the Objector adopts the arguments advanced by the learned counsel for State submits that date of birth of prosecutrix is 24.4.2002, therefore, she was minor on the date of incident. Further, the prosecutrix is the member of Scheduled Tribe community. She has clearly stated in her statement recorded under Section 161 of CrPC about the involvement of all the applicants in the commission of offence of rape and illegal abortion. One Compact Disc (CD) has been produced along with objections in which conversation of Dr. Rakesh Sharma is recorded which establishes the offence against him. It is submitted that applicant Ambikeshwar Singh and Dr. Rakesh Sharma both have criminal antecedents, therefore, they are not entitled for grant of any relief.

11. In reply, it is submitted by the counsel appearing for applicant in MCRC No.5470 of 2019 that there is no conviction in any of the previous cases against applicant No.2. The CD produced has no relevance as it has not been supplied to the applicants under Section 207 of CrPC and neither was produced before the police during investigation,

therefore, this is not an admissible piece of evidence.

12. Learned Counsel appearing for applicant in MCRCA No.1335 of 2019 submits that the evidence of CD, which is produced with objection, is not the part of the prosecution case and, further, it is not certified under Section 65B of Evidence Act, therefore, applicant Dr. Rakesh Sharma is entitled for grant of anticipatory bail.

13. Heard both the parties and perused the case diary.

14. FIR has been lodged by the prosecutrix, aged about 17 years, to the effect that in the month of July, 2018 applicant Ambikeshwar Singh offered the mother and grand-father of the prosecutrix that he will provide high school studies to the prosecutrix in his place and agreeing to which, she was given in custody of applicant Ambikeshwar Singh. While residing in his place applicant Injuriya forced her to sleep with applicant Ambikeshwar Singh. The prosecutrix was given some medicine by applicant No.2 for giving relief in her piles. Subsequent to which she went unconscious and thereafter she was raped by applicant Ambikeshwar Singh. This continued for some time, thereafter on asking by the prosecutrix she was sent back to her grand-mother. When the size of her abdomen began to increase, applicant Ambikeshwar Singh again came and offered that he will get her treated and thereafter he took her to Sharma Hospital, where some surgical procedure was done and at the time she was having pregnancy of 3 to 4 months. She again came back and started living with Ambikeshwar Singh, however, when she went back to her mother and grand father she informed them about the incident and then the matter was reported to the police.

15. Considering the entire material present in the case diary, FIR in this

case has been lodged on 30.5.2019 which appears to be delayed. In the medical examination report, there is no specific finding regarding any previous pregnancy and abortion of the prosecutrix and further, for the reason that applicant Injuriya is a woman, applicant Ambikeshwar Singh is suffering from a serious disease, for which he is required to undergo surgery, and that there is no evidence identifying that Dr. Rakesh Sharma is the person who had conducted D & C procedure upon the prosecutrix, I am of this view that this is a fit case where the respective applications filed by the applicants are deserve to be allowed.

16. Accordingly, the anticipatory bail application filed on behalf of applicant is allowed and it is directed that in the event of his arrest in connection with the aforesaid offences, he shall be released on bail by the officer arresting him on his executing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Investigating Officer. The applicant shall also abide by the following conditions :-

- (i) that the applicant shall make himself available for interrogation before the investigating officer as and when required;
- (ii) that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer;
- (iii) that the applicant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that the applicant shall appear before the trial Court on each

and every date given to him by the said Court till disposal of the trial.

17. Bail application filed on behalf of applicants i.e. M.Cr.C. No.5470/19 is allowed. It is directed that the applicants shall be released on bail on their furnishing a personal bond for a sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned trial Court, for their appearance as and when directed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha