

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 5545 of 2019**

Hemchand Singh Porte, aged about 30 years, S/o Atmaram Porte, R/o Padariya, P.S. Takhatpur, District Mungeli, Presently R/o Sakri, Ward No.2, P.S. Chakarbhata, District Bilaspur (CG).

---- Applicant**Versus**

State of Chhattisgarh, through Officer-in-charge of P.S. Pathariya, District Mungeli (CG).

---- Non-applicant

For Applicant	: Mr. Pallav Mishra, Advocate
For Non-applicant	: Mr. Praveen Shrivastava, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****06.09.2019**

1. This is third bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court.
2. Perused the case diary provided by the counsel for the State in connection with Crime No.374/2018 registered at Police Station Pathariya, Mungeli for the offence punishable under Sections 354, 354D, 509(B), 506, 34 of IPC, Sections 12,17, 9(f)(g)(I) of POCSO and Section 67 of I.T. Act.
3. The first bail application of the applicant was rejected on merits by this Court vide order dated 30.01.2019 passed in M.Cr.C. No.9600/2018. His second bail application was also rejected on merits by this Court vide order dated 03.07.2019 passed in M.Cr.C. No.3542/2019.
4. Case of the prosecution, in brief, is that in March 2016 the prosecutrix was aged about 16 years. She is a resident of village Saragaon. She was studying in Government Girls H.S. School, Saragaon. Applicant was posted as Teacher in that school. Applicant had trapped her in a love affair. Thereafter, he used to kiss and press her breast.
5. Counsel for the applicant submitted that in the case in hand prosecutrix as P.W.-3 has been examined in the trial Court, she turned hostile. In support of case, he drew my attention on paragraphs No.54, 55, 56, 57 & 58 of the certified copy of statement of prosecutrix (P.W.-3), which is a part of bail application, wherein she has stated that the applicant had not committed any wrong act with her. Due to annoyance,

she lodged a report against him hence the applicant may be released on bail.

6. On the other hand, counsel for the State opposed the bail application. However, he submitted that there is no criminal antecedent is reported against the applicant.

7. Though, prosecutrix (P.W.-3) turned hostile before the trial Court, but she stated against the applicant in para 1 during her examination-in-chief.

8. This is well settled legal principle that while dealing with the bail application, this Court can neither scrutinize the evidence nor appreciate the evidence. Only the trial Court is competent to do so. This is also recognized legal position that while dealing with the bail application, the Court cannot look into the defence put forward by the accused.

9. In the case in hand, earlier in the second bail application of the applicant, this Court has already framed time of five months for the conclusion of the trial.

10. Looking to the above mentioned facts and circumstances of the case and looking to the material available on record against the applicant, this Court finds that there is no change in the circumstances of the case on the strength of which the applicant be released on bail in the third round of litigation. Consequently, the third bail application is rejected.

11. Certified copy as per rules.

SD/-

(Sharad Kumar Gupta)
JUDGE

L/-