

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 7366 of 2019**

Arjun Parihar S/o Shri Shankarlal Parihar Aged About 28 Years R/o Indra Nagar, Ward No. 5, Dongargarh, Police Station And Tahsil - Dongargarh, District - Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through - District Magistrate Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh .

---- Respondent

For the Applicant	:	Shri Shashi Bhushan Tiwari, Advocate
For the State	:	Shri Suyash Dhar, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta

Order On Board**22/11/2019**

1. This is the second bail application under Section 439 of the CrPC. Earlier first bail application of the applicant was rejected by this Court on 08/01/2019 in MCRC No. 9358/2018 considering *prima facie* case against him.
2. Perused the case diary provided by the learned counsel for the State in connection with the Crime No.131/2018 registered at Police Station Churiya, District Rajnandgaon (C.G.) for the offence punishable under Section 376(2)(n) of IPC.
3. Case of the prosecution, in brief is that prosecutrix is the resident of Indiranagar, Dongargarh. She is aged about 19 years old. Applicant committed repeatedly sexual intercourse with her on pretext of marriage. Later on she came to know that the applicant is already married and is father of two children.
4. Counsel for the applicant argued that firstly the applicant had made a complaint against the prosecutrix making the allegation that she is demanding money, thereafter she lodged the report. In the case in hand prosecutrix is the consenting party. He drew my attention on para 4 & 5 of certified copy of statement of PW-5 prosecutrix which is the part of bail application. He further submitted that other witnesses

who have been examined turned hostile in the trial Court. He further submitted that after the marriage prosecutrix was medically examined. He further submitted that out of 21 witnesses only 8 witnesses have been examined. Thus applicant may be released on bail.

5. On the other hand, counsel for the State opposes the bail application. He further submits that no criminal antecedents against the applicant is reported in the police case diary.
6. This is well settled legal position that at the time of considering bail application, defense of accused cannot be looked into.
7. This is true that delay in trial is a considerable factor for the disposal of the bail application, but equally it is also true that seriousness of the offence and impact of granting bail to the accused on society are more important and material factors while deciding the bail application. In the case in hand it can't be said that PW-5 prosecutrix turned totally hostile. She had stated against the applicant in para No. 4.
8. This is also well settled legal position that while dealing the bail application Court neither can scrutinize nor appreciate it the competent Court which can do so is only the trial Court.
9. This is also settled legal position that while dealing the bail application Court cannot consider the merit or demerit of the case.
10. In the case in hand applicant who is already married and father of two children allegedly committed sexual intercourse with the prosecutrix.
11. Looking to the above mentioned facts and circumstances of the case, considering totality of the case this Court finds that there is no material change in the circumstances which may entitle applicant to enlarge on bail on second round of litigation. Consequently, second bail application of the applicant is rejected. However, trial Court is directed to expedite the trial and dispose of the case as soon as possible.

Sd/-
(Sharad Kumar Gupta)
Judge