

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MCRC No. 9630 of 2018**

Kush Kumar Noniya, S/o Shri Ramesh Kumar Noniya, aged about 26 years, R/o Sukulpara Kharod, P.S. Shivrinarayan, District Janjgir Champa (CG). ---- **Applicant**

Versus

State of Chhattisgarh, through Station House Officer, Shivrinarayan, District Janjgir Champa (CG). ---- **Non-applicant**

For Applicant	: Mr. Ajay Ayachi, Advocate
For Non-applicant	: Mr. Sumit Jhanwar, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta
Order On Board

15.01.2019

1. This is first 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.77/2017 registered in Police Station Shivrinarayan, District Janjgir Champa for the offence punishable under Sections 376 D, 328, 373, 34 of IPC.
3. Case of the prosecution, in brief, is that the prosecutrix was aged about 19 years old. She is a resident of village Kharod, There was love affair between her and co-accused Sagar Yadav. On 07.03.2018 at night, co-accused Sagar Yadav told her that her friend namely Chandrakanta is calling her at near the pond to meet her. The prosecutrix along with co-accused Sagar Yadav and Chotan went there by motorcycle. When she reached at near the pond, she did not find her friend Chandrakanta there. After sometime, the applicant and co-accused Love Kumar Noniya were also reached there. Thereafter, the applicant and all three said co-accused committed sexual intercourse with her one by one. Someone has given intoxicant liquid her to drink.
4. Counsel for the applicant submits that the applicant has not committed any offence and has been falsely implicated in the case. He further submits that grandfather of prosecutrix namely Pardeshi Ram gave an application to Station House Officer, Shivrinarayan on 14.03.2018, wherein it has been mentioned that she was unconscious and has not told anything about the incident. In M.L.C. report, no injury was found on her body. Doctor has also mentioned that she has not made any complaint except vomiting and there is a delay in lodging the FIR. In these circumstances, the applicant may be released on bail.
5. On the other hand, counsel for the State opposes the prayer for grant of bail to the applicant however he submits that no criminal antecedent reported against the applicant in police case diary.
6. The aforesaid circumstances raised by the counsel for the applicant are the subject matter of scrutiny of the evidence which would be done by the trial Court at the time of final disposal of the case.
7. Looking to the above mentioned facts and circumstances of the case, looking to the evidence prima facie available against the applicant and looking to the seriousness of the offence; and looking to the impact of granting bail to the applicant on society, this Court is not inclined to give benefit of Section 439 of the Cr.P.C. to the applicant. Consequently, the bail application is rejected.
8. Certified copy as per rules.

Sd/-
(Sharad Kumar Gupta)
JUDGE

L/-