

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 774 of 2020**

Mukesh Kumar Sahu S/o Gangaram Sahu Aged About 20 Years R/o
Village Kuthrel Police Station Anda District Durg , Chhattisgarh.,
District : Durg, Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through Sho , Police Station Anda, Durg
Chhattisgarh., District : Durg, Chhattisgarh

---- Respondent

For the Applicant	:	Shri Aman Pandey, Advocate
For the State	:	Shri Ravi Maheshwari, P.L.

Hon'ble Shri Justice Sharad Kumar Gupta

Order On Board**04/02/2020**

1. This is the second bail application under Section 439 of the CrPC. Earlier his first bail application was rejected by this Court vide order dated 06/02/2019 passed in MCRC No. 374/2019 considering *prima facie* case against him.
2. Perused the case diary provided by the counsel for the State in connection with the Crime No.72/2018 registered at Police Station Anda, District Durg (C.G.) for the offence punishable under Sections 454,376 of IPC.
3. Case of the prosecution, in brief is that prosecutrix is about 55 years of old, she is resident of village Kuthrel. On 24/09/2018 at about 12 pm at village Kuthrel applicant entered in the house of prosecutrix and committed forcible sexual intercourse with her.
4. Counsel for the applicant submitted that in the case in hand six witnesses have been examined. There are a material omissions and contradictions in their statements. FIR is delayed. Medical evidence does not support the prosecution case. Applicant is in jail since 27th September 2018. Prosecutrix had stated her age 65 years during examination by the trial Court, though as per prosecution story her age was 55 years, thus she had given exaggerated statement. He

drew my attention on para No. 13, 14 and 18 of photocopy of statement of PW-2 prosecutrix which is part of the bail application, in these circumstances 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 has been reported against the applicant in the police case diary.
6. This is true that detention period of the accused and delay in trial are material factors for disposal of the bail application filed by the accused. But equally it is also true that seriousness of the offence and impact of granting bail to the accused on society are more material and important factors for disposal of the bail application filed by the accused. Earlier on 06/02/2019 this Court had dealt the matter of delay in FIR and medical report.
7. This is well settled legal position that while dealing the bail application Court neither can scrutinize the evidence nor appreciate the evidence only the trial Court who is competent to do so at the time of appreciation of evidence. This is also well settled legal position that while dealing the bail application Court cannot touch merits and demerits of the case.
8. Moreover in the case in hand PW-2 prosecutrix had stated against the applicant in para No. 4 during the examination-in-chief.
9. Looking to the above mentioned facts and circumstances of the case, this Court finds that this is not a fit case where the applicant may release on bail in second round of litigation. Consequently his second bail application is rejected.

Sd/-

(Sharad Kumar Gupta)
Judge