

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 1435 of 2020**

Ramchand Gandharva, S/o Shri Fakirchand Gandharva, aged about 40 years,
R/o Ward No.25, Infront of Anil Press, Dallirajhara, Police Station Dallirajhara,
District Balod (CG).

---- Applicant**Versus**

State of Chhattisgarh, through Station House Officer, Police Station
Dallirajhara, District Balod (CG).

---- Non-applicant

For Applicant	: Mr. Ganesh Burman, Advocate
For Non-applicant	: Ms. Deepti Shukla, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****02.03.2020**

1. This is second 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.127/2019 registered at Police Station Dallirajhara, District Balod for the offence punishable under Sections 450, 376, 506 of Indian Penal Code.
3. The first bail application of the applicant was rejected on merits by this Court vide order dated 02.09.2019 passed in M.Cr.C. No.4410/2019 considering prima facie case against him.
4. Case of the prosecution, in brief, is that prosecutrix is aged about 35 years old. She is resident of village Rajhara. In the month of March, 2018 the applicant reached in her house having sword, threatened her and committed sexual intercourse with her. She orally informed to the police station where the FIR was not lodged and a copy of information of Non-cognizable Offence was given to her, a meeting of community was also held, thereafter, he repeatedly committed sexual intercourse with her.
5. Counsel for the applicant submitted that the applicant is in jail since 21.05.2019, this is a case of total consent, there was a dispute between the applicant and prosecutrix regarding monthly maintenance and cash, if the applicant could have given the maintenance and cash to the prosecutrix, then prosecutrix would have not lodged the FIR. He

further submitted that there are material omission and contradiction in her statement. He drew my attention on para Nos. 20 & 22 of certified copy of statement of Prosecutrix (P.W.1), which is the part of bail application.

6. On the other hand, counsel for the State opposed the bail application, however, submitted that there is no criminal antecedent has been reported against the applicant as per police case diary. She drew my attention on para Nos.3, 16 & 24 of certified copy of statement of prosecutrix (P.W.1).

7. This is true that the detention period of the accused and delay in trial are material factors for disposal of the bail application. But equally, it is also true that seriousness of the offence and impact of granting bail to the applicant on society are more material and important factors for disposal of the bail application.

8. This is well settled legal principle that while dealing with the bail application, the Court can neither scrutinize the evidence nor appreciate the evidence. It is only trial Court, who can do so at the time of appreciation of the evidence.

9. This is also well settled legal principle that while dealing with the bail application, the Court cannot touch the merit and demerit of the case. Moreover in the case in hand, prosecutrix (P.W.1) had stated against the applicant in para No.3 during her examination in chief.

10. Looking to the above mentioned facts and circumstances of the case, this Court is not impressed with the argument raised by the counsel for the applicant. Considering the facts and circumstances of the case, this Court finds that this is not a fit case where the applicant may be released on bail in the second round of litigation. Consequently, the second bail application is rejected.

11. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)
JUDGE