

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 3687 of 2020**

- Smt. Shanti Bai Rajak W/o Moti Ram Rajak Aged About 38 Years R/o Village Askala, P. S. Lundra, P. S. Chowki, Raghunathpur, District Surguja Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Police Station Narayanpur/Jashpur District Jashpur Chhattisgarh

---- Respondent

&**MCRC No. 3697 of 2020**

- Rashid Khan S/o Late Anul Hassan Khan Aged About 56 Years Occupation Teacher, R/o Darakhrika Police Station Narayanpur, Tahsil Kunkuri District Jashpur Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer Police Station Narayanpur District Jashpur Chhattisgarh

---- Respondent

For Applicant Shanti Bai Rajak	:	Shri Sunil Tripathi, Advocate
For Applicant Rashid Khan	:	Shri J.K.Saxena, Advocate
For State	:	Shri Ravish Verma, Govt. Adv.
For Objector / Prosecutrix	:	Shri A.N.Bhakta, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****16/09/2020**

Heard.

A common order is being passed in both the cases as they arise out of the same crime number.

1. The applicants have been arrested in connection with Crime No.16/2020 registered at Police Station – Narayanpur / Jashpur, District – Jashpur (C.G.) for alleged commission of offences under Section 376, 313, 506, 120 (B) of IPC and Section 5, 6 of POCSO Act.

2. Prosecution case is that the prosecutrix, a minor who was studying in the school in Class 7 used to be administered pills by the applicant – Rashid Khan who was a Teacher in the school and it is alleged that Rashid Khan used to sexually exploit the minor girl due to which, the minor girl became pregnant and under a conspiracy hatched, 7 months' pregnancy was aborted on 22/02/2020. Against accused Shanti Bai Rajak, the allegation is that she conspired and played important role in getting the prosecutrix aborted.

3. Learned counsel appearing for the applicant – Shanti Bai Rajak would submit that Shanti Bai has been involved subsequently and the manner in which Shanti is said to have accompanied other accused and the prosecutrix, does not show that she had any role in the alleged conspiracy leading to abortion of pregnancy of the prosecutrix. He would submit that according to the prosecution itself, the prosecutrix and the applicant – Shanti Bai Rajak were picked up from the market and they were taken to the hospital where pregnancy said to have been aborted. Therefore, present applicant is not involved and as the investigation is complete, charge sheet has been filed, she being a lady is not in a position to tamper with the prosecution witnesses or likely to abscond, she may be granted bail.

Learned counsel appearing for Rashid Khan would argue that the prosecution allegation against the applicant – Rashid Khan is improbable because according to the prosecutrix, the alleged incident of sexual exploitation is said to be during July 2019 whereas in the present case, FIR has been lodged after a long delay only when the pregnancy was aborted and not before that. As the FIR was lodged on 27/02/2020 after alleged abortion dated 22/02/2020, the allegations were based on false testimony. He submits that the applicant – Rashid Khan remained in jail since 02/03/2020, investigation is complete and charge sheet has been filed. Therefore, the present applicant may be granted bail.

4. On the other hand, learned State counsel would submit that on the face of the material contained in the charge sheet and the specific allegations made by the prosecution who is barely 13 years of age makes out a case of commission of offence of rape by the applicant – Rashid Khan because the prosecutrix has clearly stated that he used to administer pills and in that state of drug inducement, Rashid Khan used to commit sexual intercourse which was later on disclosed when she became pregnant and FIR was lodged. According to him, the material with regard to 7 months' pregnancy followed by

abortion, rules out false implication of applicant – Rashid Khan even though the FIR was lodged on 27/02/2020.

As far as applicant – Shanti Bai Rajak is concerned, learned State counsel submits that she was the aunt of the prosecutrix and it is improbable, she would not know that the prosecutrix was being brought for termination of pregnancy. Therefore, she is equally involved in so far as termination of pregnancy is concerned.

5. Learned counsel for the objector raises objection to grant of bail to applicant – Rashid Khan though states no objection for grant of bail to Shanti Bai Rajak.

6. On *prima facie* consideration on the basis of material contained in the application and what has been stated by the State counsel with regard to the contents of the case diary is that the applicant – Rashid was working in a school as a Teacher in which the minor prosecutrix was studying in class 7 and the prosecutrix has clearly alleged against him that he used to administer pills and sexual intercourse was committed on her by him. Taking into consideration the material with regard to 7 months' pregnancy followed by abortion, present is not a fit case for grant of bail to the applicant – Rashid Khan.

As far as applicant – Shanti Bai Rajak is concerned, even according to the prosecution, she is not alleged to be involved in the case of rape but her involvement based on allegations that she was taken to hospital along with the prosecutrix and there, the pregnancy of the prosecutrix was aborted. Therefore, considering this aspect and that she is in jail since 29/02/2020 and that investigation is complete and she does not appear to be in a position to tamper with the prosecution witnesses, her application is allowed.

7. It is directed that the applicant – Shanti Bai Rajak shall be released on bail on her furnishing a personal bond in the sum of Rs.20,000/- along with one local surety for the like amount to the satisfaction of the Trial Court on the condition that -

- a) She shall appear before the Trial Court regularly on each and every date, unless exempted from appearance.
- b) She shall not in any manner, tamper with the prosecution witnesses.

Certified copy as per rules.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge