

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 4781 of 2020**

Kirti Kumar Sharma, S/o Ramavatar Sharma, aged about 44 years, R/o Barela, Police Station Jarhagaon, District Mungeli (CG).

---- Applicant**Versus**

State of Chhattisgarh, through Station House Officer, Police Station Jarhagaon, District Mungeli (CG).

---- Non-applicant

For Applicant	: Mr. Malay Shrivastava, Advocate
For Non-applicant	: Mr. D.K. Tiwari, Dy.G.A.

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****02.09.2020**

1. This is third 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.89/2019 registered at Police Station Jarhagaon, District Mungeli for the offence punishable under Sections 294, 354, 354(A) of Indian Penal Code, Sections 9 & 10 of Prevention of Children from Sexual Offences Act, 2012 and Section 3(1)(b) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989.
3. The first bail application of the applicant was dismissed for want of prosecution by this Court vide order dated 16.08.2019 passed in M.Cr.C. No.4676/2019. His second bail application was rejected on merits by this Court vide order dated 28.01.2020 passed in M.Cr.C. No.547/2020 considering prima facie case against him.
4. Case of the prosecution, in brief, is that there are 16 prosecutrix, some of them belongs to Schedule Caste. Applicant was a teacher in Government Middle School, Barela. One month prior to 28.03.2019 to 28.03.2019 applicant had used criminal force upon 16 prosecutrix to outrage their modesty and also made sexually coloured remarks.
5. Counsel for the applicant submitted that in the case in hand, 31 prosecution witnesses cited by the prosecution, but only 09 prosecution witnesses examined. While rejecting the second bail application on 28.01.2020, this Court directed to the trial Court to expedite the trial and

dispose of the case as soon as possible, but the trial Court has not concluded yet. After the direction of this Court, only 03 prosecution witnesses examined, 09 prosecution witnesses turned hostile and did not support the prosecution case. The applicant is in jail since 25.06.2019 and there is no material progress in the trial. Looking to the situation of COVID-19, there is no possibility of early conclusion of trial. The father of the applicant is suffering from Cardiac disease. He drew my attention on certified copies of the statements of prosecutrix (P.W.-1), Laveena Luthor (P.W.2), prosecutrix (P.W.3), prosecutrix (P.W.4), prosecutrix (P.W.5), prosecutrix (P.W.6), prosecutrix (P.W.7), prosecutrix (P.W.8), prosecutrix (P.W.9) and Annexure A/3, which are the part of bail application.

6. On the other hand, counsel for the State opposed the bail application. He further submitted that no criminal antecedent is reported against the applicant as per police case diary.

7. In the case in hand, there are 16 prosecutrix. Allegedly applicant was a teacher in Government Middle School, Barela, where the prosecutrix were students.

8. This is true that the detention period of the accused and delay in trial are material factor 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 applicant on society are more material and important factors for disposal of the bail application filed by the applicant.

9. Mere turning hostile of some prosecutrix is not itself a sufficient ground to enlarge the applicant on bail. Moreover in the case in hand, remaining prosecutrix are to be examined. Moreover, in the case in hand, prosecutrix (P.W.1), prosecutrix (P.W.3) and prosecutrix (P.W.9) had stated against the applicant in para No.1 during examination-in-chief respectively.

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

11. As per Annexure A/3, the father of the applicant was discharged on 04.01.2020. *Prima facie* it does not appear that he is suffering from severe cardiac disease. Looking to the situation of COVID-19, it cannot be held that the trial Court is responsible for delay in trial.

12. Looking to the above mentioned facts and circumstances of the

case, this Court finds that it is not a fit case where the applicant may be released on bail in the third round of litigation. Consequently, the third bail application is rejected. However, the trial Court is directed to expedite the trial and conclude the case as soon as possible from resuming the regular work of the Court.

13. At this stage, learned counsel for the applicant submitted that he is not praying for direction to the trial Court to expedite the trial.

14. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)
JUDGE

L/-