

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No.4989 of 2020**

- Sharad @ Mota Sinha S/o Shri Sukhdev Ram Sinha Aged About 23 Years R/o Village- Majgaon, Police Station Dadhi District Bemetara, Chhattisgarh, District : Bemetara, Chhattisgarh

---- **Petitioner****Versus**

- State Of Chhattisgarh Through Sho Police Station Dadhi, District Bemeta, Chhattisgarh, District : Bemetara, Chhattisgarh

---- **Respondent**

For Applicant	:	Shri Vaibhav A. Goverdhan, Advocate
For Respondent/State	:	Shri Ravish Verma, GA

Single Bench: Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****28/09/2020**

Heard.

1. The applicant has moved this application under Section 439 of the Cr.P.C. for grant of regular bail in connection with Crime No.73/2020 registered at Police Station Dadhi, District Bemetara for the offence punishable under Section 376 DA, 511, 302 of the IPC and Section 4 & 6 of POCSO Act . The applicant was arrested on 22-06-2020.
2. Prosecution case is that the present applicant and co-accused caught hold of the prosecutrix, a minor and attempted to commit rape on her, but when they could not succeed, poured kerosene on her and set ablaze.
3. Learned counsel for the applicant would argue that the involvement of the applicant is based on suspicion, because in the dying declaration, the prosecutrix has named one Sharad, without giving details of his surname, therefore, it is highly doubtful, whether it was the applicant or some one else. It is next submitted that dying declaration itself is highly doubtful, because when the prosecutrix was admitted in Primary Health Centre, in the beginning, the Doctor on duty, stated that the injured was not in a fit condition to give statement as she had suffered 94% burn injuries and died also on 24-06-2020

morning. It is highly doubtful that she was in a fit state to give statement before the Executive Magistrate on 23-06-2020. Next submission is that dying declaration itself does not inspire confidence, because the victim was not in a fit condition and making confusing statement. It is also submitted that though in the dying declaration, the victim stated that the offenders were seniors in the school, but, marksheet of the applicant filed along with the bail application, shows that the applicant had passed 12th examination wayback in the year 2013-14. The plea of *alibi* has also been taken by submitting that the applicant was working as Data Entry Operator in the Primary Health Centre, Chhera and the certificate issued from the office shows that the applicant was present in the office throughout on 22-06-2020, which is also clear from the CCTV Footage installed in the Primary Health Centre, Chhera, in which, the applicant is seen entering office at 11.16 AM and leaving office at 16.15 hours in the afternoon and according to the victim, the incident happened at about 3 PM. He would lastly submit that though bail application of the applicant was rejected by the trial Court, but directed proper investigation by taking into consideration the school records, attendance register and CCTV footage. He submits that there was no fair investigation carried out and without any investigation in that direction, the police filed charge sheet, therefore, the applicant deserves grant of bail.

4. On the other hand, learned counsel for the State/non-applicant opposes the bail application by submitting that in the present case, the victim has given dying declaration to the Executive Magistrate on 23-06-2020 and doctor certified that the prosecutrix was in a fit condition to give statement. Dying declaration has been recorded by the Executive Magistrate. In the dying declaration, the victim has clearly named the applicant as Sharad. It is submitted that statements of father, mother, brother and sister of the deceased were recorded on 24, 25, 29th June and 6th July, 2020 and all of them have stated that when they approached at the spot, the victim has given oral dying declaration, in which, she clearly named the applicant. He would submit that the applicant is a resident of the same village as that of the deceased and the incident also happened in the same village. The plea of *alibi* are matter of consideration during trial at the stage of defence.

5. Taking into consideration the submission of learned counsel for the parties, particularly taking into consideration the nature and gravity of offence and that the applicant has been named in the dying declaration and he is said to

be resident of the same village where the incident happened as also looking to the oral dying declaration of the victim, the present is not a fit case for grant of bail.

6. Accordingly, the bail application is rejected. Though, learned counsel for the applicant has submitted that direction may be issued for holding fresh investigation in this case, it would be open for the applicant to take appropriate remedy under the law for such directions before the appropriate Judicial Forum.

Certified copy as per rules.

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