

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 6251 of 2020**

- Moolchand S/o Topsingh Aged About 41 Years Resident Of Village Tamruwa Out Post Dashrangpur, Police Station Pipariya, District Kabirdham Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Pipariya (Out Post Dashrangpur), District Kabirdham Chhattisgarh

---- Non Applicant

For the Applicant	:	Mr. Chandrabhushan Kesharwani, Advocate
For Non Applicant	:	Mr. D. C. Verma, G. A.

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****28.10.2020**

1. This is fourth bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court. No other bail application is pending before any other Court.
2. Earlier, the first bail application of the applicant was dismissed as withdrawn by this Court vide order dated 26.06.2019 passed in MCRC No.3201 of 2019, his second bail application was dismissed for want of prosecution by this Court vide order dated 13.12.2019 passed in MCRC No.5589 of 2019, his third bail application was rejected by this Court vide order dated 17.01.2020 passed in MCRC No. 8494 of 2019 considering prima facie case against him.
3. Perused the case diary provided by the learned counsel for the State in connection with Crime No.113/2019 registered at Police Station-Out Post Dashrangpur, Police Station Pipariya, District- Kabirdham (C.G.) for the offence punishable under Sections 376 & 506 of the Indian Penal Code.
4. Case of the prosecution in brief is that prosecutrix is about 24 years old. She is resident of village Khandsara. On 20.04.2019 at about 8:00pm when she went to attend of nature's call towards river, applicant reached there, caught hold and took her at Anganvadi and committed forcible sexual intercourse

with her and gave threatening to kill her.

5. Counsel for the applicant submitted that in the case in hand, out of 14 only 7 prosecution witnesses examined, applicant is in jail since 25.04.2019, no incriminating material available on record against him. Prosecutrix is consenting party, bail is rule and jail is exception. Hence, applicant may be released on bail.
6. On the other hand, learned counsel for the State opposes the bail application, however, he submits that there is no criminal antecedent against the applicant reported in police case diary.
7. This is true that delay in trial and detention period of the accused 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.
8. While dealing the third bail application of applicant this Court clearly observed the Para 7 in order dated 17.01.2020 that prosecutrix had stated against the applicant in Para 1 and 4 of examination-in-chief.
9. This is well settled legal position that while dealing the bail application Court can neither scrutinize the evidence nor appreciate the same, it is only the trial Court who can do so at the time of appreciation of the evidence.
10. This is also well settled legal position that while dealing the bail application Court can not touch the merits and demerits of the case.
11. This is true that bail is rule and jail is exception but equally it is also true that seriousness of the offence and impact of granting bail to the accused on society cannot be ignored.
12. Looking to 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 fourth round of litigation. Consequently, fourth bail application is rejected.
13. However, trial court is directed to expedite the trial and dispose of the case as soon as possible preferably within 3 months after resuming the regular work of the Court.

Sd/-

(Sharad Kumar Gupta)
Judge