

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURMCRC No. 6645 of 2020

1. Zahid Beig, S/o Jamal Beig, Aged About 25 Years R/o Village Dagori Post Dogori Police Station Bilha, District Bilaspur Chhattisgarh.

---- Applicant

Versus

1. State Of Chhattisgarh Through - Police Station Civil Line, Bilaspur District - Bilaspur Chhattisgarh.

---- Respondent

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For Applicant                      Ms Naushina Ali, Advocate

For Respondent /State Mr. Dinesh Tiwari, Dy. Govt. Advocate

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*(Proceedings through Video Conferencing)*

Hon'ble Mr. Justice Prashant Kumar Mishra

Order On Board

2/11/2020

1. Heard.
2. The applicant has preferred this first bail application under Section 439 of CrPC, as he is arrested in connection with Crime No.348/2020, registered at Police Station Civil Lines, District Bilaspur (CG), for the offence punishable under Sections 376, 376(2)(ड) & (घ) and 450 of the Indian Penal Code. *[as per the rejection order]*

3. As per the prosecution case the applicant and co-accused Uttara Banjare, both Ward Boys in Shri Ram Care Hospital, committed forcible sexual intercourse with the prosecutrix when she was admitted in the ICU of the said Hospital for being ill due to consumption of poison. It is alleged that during the intervening night of 21<sup>st</sup> & 22<sup>nd</sup> of May, 2020 the applicant committed rape whereas the co-accused Uttara Banjare was holding the prosecutrix.
4. Ms Naushina Ali, learned counsel appearing for the applicant, would argue that the prosecutrix was admitted in the Hospital for consuming poison. She was on ventilator, catheter and was administered heavy doses of medicine e.g. Atropine, which causes dizziness, blurred vision, nausea to name a few and was, thus, in a state of delirium and probably due to the discomfort in her private part caused by the 'A' line catheter she was hallucinating that she was raped. Learned counsel would further submit that as per the opinion of the Doctor there was no injury on her private part and hymen was found intact, therefore, no definite opinion has been given about the rape. Learned counsel would next submit that as per the FSL report no stain of semen or human sperm has been found on the samples. Learned counsel would refer to the order passed by the coordinate Bench of this Court on 28-8-2020 in M.Cr.C.No.4625 of 2020 allowing bail to the co-accused Uttara Banjare.
5. On the other hand, Mr Dinesh Tiwari, learned counsel appearing for the State, would vehemently oppose the

bail application. Learned counsel would submit that the allegation of commission of rape is against this applicant, which was not against co-accused Uttara Banjare. Shri Tiwari would read over the statement of prosecutrix recorded under Sections 161 & 164 Cr.P.C. and would also refer to the other material in the case diary. Thus, learned counsel for the State would impress upon the Court to distinguish the allegation of this applicant with the case of co-accused Uttara Banjare.

6. Having heard learned counsel for the parties, I am of the opinion that while allowing the bail to co-accused Uttara Banjare this Court has not referred to the specific role played by the said accused. Having noted the submission of the learned counsel for the applicant in para 3 of the order passed in M.Cr.C.No.4625 of 2020 the coordinate Bench proceeded to observe that considering the nature and gravity of the offence, facts and circumstances of the case and that Uttara Banjare is in jail 16-6-2020 and the trial is likely to take some time for its final disposal, the prayer for bail deserves to be allowed. Thus, the nature of allegation against the said accused was not the only reason for allowing bail, therefore, it was never observed that he is allowed bail only for the reason that he has not committed rape.
7. This Court has appreciated the submissions made by the learned counsel for the applicant as well as learned counsel for the State.

8. The medical report of the prosecutrix did not find any injury on her private parts; hymen was found intact; and no definite opinion about rape was given by the Medical Officer examining the prosecutrix. Moreover, no stain of semen or human sperm has been found on the samples sent for FSL examination.
9. Without commenting on the argument as to administration of injunction Atropine, suffice it would be to say that once the co-accused has been allowed bail after considering the merits of the matter, the present applicant, who is also in detention since 16-6-2020, is entitled to be released on bail. Thus, I am of the opinion that present is a fit case to release the applicant on regular bail.
10. Accordingly, the bail application is allowed and the applicant is directed to be released on bail on his executing a personal bond for a sum of Rs.50,000/- with one surety in the like amount to the satisfaction of the trial Court. He is directed to appear before the trial Court on each and every date given by the said Court.
11. Certified copy as per rules.

Sd/-

(Prashant Kumar Mishra)  
Judge

Gowri