

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 7865 of 2019**

1. Sitaram S/o Kabari Markam Aged About 25 Years R/o Village - Devsara, Police Station - Kukdur, District - Kabirdham Chhattisgarh., District : Kawardha (Kabirdham), Chhattisgarh
2. Saroj S/o Dulashram Paraste Aged About 23 Years R/o Village - Devsara, Police Station - Kukdur, District - Kabirdham Chhattisgarh., District : Kawardha (Kabirdham), Chhattisgarh
3. Durgesh S/o Mohit Yadav Aged About 21 Years R/o Village - Devsara, Police Station - Kukdur, District - Kabirdham Chhattisgarh., District : Kawardha (Kabirdham), Chhattisgarh

---- Applicants

Versus

- State Of Chhattisgarh Through - Station House Officer, Police Station - Kukdur, District - Kabirdham Chhattisgarh., District : Kawardha (Kabirdham), Chhattisgarh

---- Non-applicant

For Applicants : Shri Dharmesh Shrivastava, Advocate.

For Non-applicant : Shri Ravi Maheshwari, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta

Order On Board

11.02.2020

1. This is second bail application under Section 439 of the Cr.P.C. preferred by the applicants before this Court. No other bail application is pending before any other Court.
2. Earlier, the first bail application of the applicants has been rejected by this Court on 22.08.2019 in MCRC No. 4066 of 2019 considering the prima facie case against them.
3. Perused the Case Diary provided by the learned counsel for the State in connection with crime No. 22/2019 registered at Police Station – Kukdur, District- Kabirdham (C.G.) for the offence punishable under

Sections 363, 366A, 376D of the Indian Penal Code and Sections 4, 6 of POCSO Act.

4. Case of the prosecution, in brief is that on 07.03.2019 prosecutrix was below 16 years of age. She is resident of village Putputa. On 07.03.2019 at about 7.00 pm she was returning back from the grocery shop after purchasing the chocolate. Applicant No. 1 Sitaram and co-accused Kashiram came near to her, took her forcefully on motorcycle to forest. In forest applicant No. 2 Saroj, Applicant No. 3 Durgesh, co-accused Sonu and Keshav reached there. They committed forcible sexual intercourse with her one by one.
5. Counsel for the applicants argued that in the case in hand P.W.7 Bharat Singh, P.W. 8 Sandeep brother of the prosecutrix, did not support the prosecution case, they turned hostile. He drew my attention on para Nos. 1,2,3,4 and 6 of the certified copy of the statements of P.W.7 Bharat Singh, para 1 of the certified copy of statements of P.W.8 Sandeep which are parts of the bail petition, thus, they may be released on bail.
6. Counsel for the applicants further submitted that some other coaccused have been released on bail by the coordinate Bench of this Court. He drew my attention on Annexure A-3 which is part of the bail application.
7. On the other hand, learned counsel for the State opposes the bail application, however submits that there is no criminal antecedent against the applicants in the case diary.
8. This is well settled legal position that while dealing with the bail application Court neither can scrutinize nor appreciate the evidence, it is only the trial Court who can do so at the time of disposal of the case.
9. This is also well settled legal position that while dealing with the

bail application Court cannot touch the merits / demerits of the case.

10. Moreover, in the case in hand P.W.2 prosecutrix had stated against the applicants in para 1 and 2 during the examination in chief.

11. Though, other coaccused have been released on bail by the coordinate Bench of this Court, they have been released on bail because they were juvenile at the time of alleged incident. In the case in hand applicants are not juvenile and their case is distinguishable from those who are released on bail by the coordinate Bench of this Court.

12. Looking to the above mentioned facts and circumstances of the case, looking to this fact that P.W.2 prosecutrix prima facie supported the prosecution case, this Court finds that this is not a fit case where the applicants may be released on bail in second round of litigation, consequently, the present bail application is rejected.

13. However, the trial Court is directed to expedite the trial and dispose off the case as early as possible.

14. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)
JUDGE