

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 8376 of 2019**

Smt. Nisha Tandon W/o Laxmikant Tandon Aged About 33 Years R/o Mahasathi Ward, Police Station - Bhatapara (City), Bhatapara, District - Balodabazar Village Doothkaitha Police Station - Bhatapara (City), District Balodabazar Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through Police Station Bhatapara (City) District - Balodabazar Chhattisgarh., District : Balodabazar-Bhatapara, Chhattisgarh

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For the Applicant	:	Shri Pragalbha Sharma, Advocate
For the State	:	Shri Suyash Dhar, P.L.

Hon'ble Shri Justice Sharad Kumar Gupta

Order On Board**08/01/2020**

1. This is the second bail application under Section 439 of the CrPC. Earlier her first bail application was rejected by this Court vide order dated 16/09/2019 passed in MCRC No.4389/2019 considering *prima facie* case against her.
2. Perused the case diary provided by the counsel for the State in connection with the Crime No.204/2019 registered at Police Station Bhatapara (City), District Balodabazar-Bhatapara (C.G.) for the offence punishable under Sections 376(D), 506 of IPC and Section 4, 6 of POSCO Act.
3. Case of the prosecution, in brief is that prosecutrix is about 18 years old and resident of Bhatapara. She is a member of scheduled caste. At the time of alleged incident she was studying in Hyderabad. Applicant is her maternal aunt. Her parents are living separately due to matrimonial disputes. She had come to her aunt's house. On 15/04/2019 in night applicant sent her on the first floor saying that she would render the service to her maternal uncle the husband of applicant and his friend Nirmal Sindhi. Her maternal uncle and Nirmal Sindhi gave her cold drink, after consuming which she became unconscious. On the next day in the morning applicant awoke her. Prosecutrix found that her clothes were

changed, there was pain in her private parts and her underwear was blood stained. Applicant asked her whether there is a pain on her abdomen. When she replied positively, applicant gave her medicine. On 16/04/2019 she telephoned to her cousin brother Rajesh resident of Hyderabad and narrated him the incident. Her maternal uncle had threatened her that he will get killed her father, thus she did not tell anything to her parents. On 27/05/2019 she lodged report in police station.

4. Counsel for the applicant submitted that prosecutrix has been examined by the trial Court and she had stated that applicant does not committed any act with her. He drew my attention on para No.6 of the true copy of the statement of PW-4 prosecutrix.
5. Counsel for the applicant placed reliance on the order of co-ordinate Bench of this Court dated 09/12/2019 passed in MCRC No.6754/2019.
6. On the other hand, counsel for the State opposes the bail application. He further submits that no criminal antecedents against the applicant is reported in the police case diary.
7. In the matter of **Anindita Das -v- Srijit Das** [(2006) 9 SCC 197] Hon'ble Supreme Court has observed in para 1 & 2 which reads as under :-
 - “1. This transfer petition has been filed by the wife on the ground that the petitioner has a small child of six years. She has further claimed that she has no source of income and it is difficult for her to attend the court at Delhi. She has further claimed that she is not keeping good health.
 2. In support of this petition, a large number of authorities have been cited, namely, *Reena Bahri v. Ajay Bahri* [(2002) 10 SCC 136], *Leena Mukherjee v. Rabi Shankar Mukherjee* [(2002) 10 SCC 480], *Ram Gulam Pandit v. Umesh J. Prasad* [(2002) 10 SCC 551] and *Rajwinder Kaur v. Balwinder Singh* [(2003) 11 SCC 726]. These authorities are all based on the facts of their respective cases. They do not lay down any particular law which operates as a precedent.
8. Looking to the aforesaid observations made by Hon'ble Supreme

Court in the matter of *Anindita Das* (supra) this Court finds that aforesaid order passed by co-ordinate Bench of this Court is based on the facts of that case. In that order no legal principle has been laid-down which operate as a judicial precedent, hence applicant does not get any help from that order.

9. As per the photocopy of the statement of PW-4 prosecutrix she had stated in para 2 in examination-in-chief that applicant had not committed any incident with her. She did not support the prosecution case and turned hostile. In these circumstances this Court finds that it is a fit case where the applicant may release on bail on second round of litigation. Consequently, second bail application of the applicant is allowed and it is ordered that if the applicant furnishes one solvent surety for a sum of Rs. 25,000/- along with a personal bond in the like sum to the satisfaction of the concerned Court with the condition that she shall appear before the concerned Court at 11.00 am as and when directed till trial and she would cooperate during the trial, she shall be released on bail.

Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)
Judge