

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 8494 of 2019**

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

---- Applicant**Versus**

- State Of Chhattisgarh Through- The District Magistrate Kawardha, District Kabirdham Chhattisgarh / Station House Officer, Out Post Dashrangpur, Police Station Pipariya, District Kabirdham Chhattisgarh

-----Non Applicant

For the Applicant	:	Mr. Chandrabhushan Kesharwani, Advocate
For Non Applicant	:	Ms. Deepti Shukla, P. L.

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****17.01.2020**

1. This is third 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 Earlier, the first bail application of the applicant was dismissed as withdrawn by this Court vide order dated 26.06.2019 passed in MCRC No.3201 of 2019.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.
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 submits that applicant is in jail since 25.04.2019. In the case in hand prosecutrix, her mother, her cousin brother have been examined and declared hostile by the prosecution. He drew my attention on Para 4, 6, 10, 12 and 13 of photocopy of the statement of P.W.-3 prosecutrix which is the part of the bail application. He further submits that if it is found that sexual intercourse was committed with prosecutrix then she was the consenting party. In these circumstances 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. P.W.-3 prosecutrix has stated in Para 1 during the examination in chief against the applicant. He further stated against the applicant in Para 4.
8. This is well settled legal position that while dealing with 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 the appreciation of the evidence.
9. This is also well settled legal position that while dealing with the bail application Court cannot touch the merits and demerits of the case.
10. If the medical evidence does not support the prosecution case it does not mean that accused is entitled for the bail. Committing wrong work includes sexual intercourse also.
11. This is true that detention period of the accused and delay in trial are material factors while dealing with the bail application 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 while dealing with the bail application.

12. Looking to the above mentioned facts and circumstances of the case, this Court rejects the third bail application of applicant.
13. Trial Court is directed to expedite the trial and dispose of the case as soon as possible.

Sd/-

(Sharad Kumar Gupta)
Judge

parul