

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 354 of 2021

- Shekhar Chelkar, S/o Udalram Chelkar, Aged About 23 Years, Caste Satnami, R/o Village Bhadra, Police Station Pamgarh, District Janjgir Champa, Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Station Pamgarh, District-Janjgir Champa, Chhattisgarh.

---- Respondent

For Applicant	:	Mr. Rahil Arun Kochar, Advocate.
For Respondent/State	:	Mr. Jitendra Shukla, Panel Lawyer.
For Objector	:	Mr. Ravindra Sharma, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

24/02/2021

Heard.

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure, 1973 on behalf of the applicant for grant of regular bail to him as he is in custody in connection with Crime No.449/2020 registered at Police-Station-Pamgarh, District-Janjgir-champa(C.G.) for the offence punishable under Sections 376, 34 of IPC and Section 4 of POCSO Act.
2. It is submitted by the learned counsel for the applicant, that the applicant has been falsely implicated. The date of incident that is

mentioned in the FIR is 15.12.2018 whereas the FIR has been lodged on 1.11.2020, hence, there is delay of almost two years. The false FIR has been lodged because of the enmity by the complainant side. The applicant has lodged one FIR against the father of the prosecutrix on 28.11.2018 in police-station Janjgir-champa on which the offence under Section 294, 506, 323, 34 of IPC was registered against him and one another, which is the reason for lodging of this false FIR. It is also submitted that the MLC report of the prosecutrix does not support the prosecution case in which the doctor has mentioned that there was no injury on the private parts of the victim and her hymen was also intact, hence, it is a case of false implication, therefore, it is prayed that this applicant be enlarged on bail.

3. On the other hand, learned counsel for the State opposes the bail application and the submissions made in this respect. It is submitted that the statement in FIR and under Sections 161 & 164 of CrPC of the victim are clearly against this applicant. Further, the age of victim had been about 13 years on the date of incident. The medico legal examination of the victim has been done after two years from the date of incident, hence, there is no possibility of finding any recent injury or no opinion can be given regarding recent intercourse. The delay in lodging of FIR has been explained by the victim in her statement, hence, there is no reason that this applicant should be granted bail.
4. In reply, it is submitted by the counsel for applicant that in the statement the victim had stated that she had informed about the incident to her parents immediately after the incident and the explanation, if any, given by the victim/prosecutrix is not satisfactory. The applicant has entitlement for grant of regular bail.

5. Upon notice, the victim/prosecutrix along with her counsel Mr. Ravindra Sharma, Advocate is present before this Court. She has strong objection in grant of bail to this applicant.
6. I have heard the learned counsel for both the parties and perused the case diary.
7. As per prosecution case, It is submitted that the prosecutrix, aged about 15 years, filed a written complaint on 1.11.2020 stating, that in the night of 15.12.2018 at about 11:00 pm when she came out of her house for urinating, this applicant and one another abducted her, confined her in the house of Kamal Jangde and then raped her twice, after gagging her mouth and tying her hands & feet, as a result she became unconscious. She was abandoned near a bridge from where she was recovered by her parents. She could not lodge FIR earlier because she was feeling ashamed and feared the public reaction. Because of non-lodging of FIR, applicant and others got encouragement and they started continuously harassing the victim because of which, she had to discontinue her education and then the FIR has been lodged.
8. Considered on the submissions. Although the FIR is delayed about two years, but the prosecutrix has attempted to explain the delay which shall be subject to examination in the trial whether such explanation is acceptable or not. Secondly, the statement of allegation against this applicant is direct and thirdly, intactness of hymen alone is not sufficient to draw conclusion that the offence of rape has not occurred. The amended provision of IPC under Section 375 does not say, that the penetration of male organ into female organ has to be complete, it

may be upto any extent. Hence, under these circumstance, I do not feel inclined to allow this bail application.

9. Accordingly, the bail application filed under Section 439 of Cr.P.C. is rejected.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Nisha