

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 741 of 2021**

- Ishwar Kathe S/o Dhanau Kathe, aged about 23 years, R/o Village Bhadra, P.S. Pamgarh, District Janjgir- Champa (C.G.)

---- Applicant

Versus

- State of Chhattisgarh the Station House Officer, P.S. Pamgarh, District Janjgir- Champa (C.G.)

---- Non applicant

For Applicant	: Mr. Atanu Ghosh, Advocate
For State	: Mr. Sudeep Verma, Deputy Govt. Advocate.
For Objector	: Mr. R. K. Manikpuri, Objector

Hon'ble Shri Justice Narendra Kumar Vyas**Order on Board****29.06.2021**

1. The applicant has preferred this first bail application under Section 439 of Code of Criminal Procedure, 1973, for grant of regular bail as he is in jail since 3.11.2020 in connection with Crime No. 449/2020, registered at Police Station Pamgarh, District Janjgir-Champa (C.G.) for commission of offence punishable under Sections 376 read with 34 of I.P.C and Section 4 of POCSO Act.
2. The prosecution case in brief is that on 01.11.2020, FIR has been lodged by the prosecutrix stating that on 15.12.2018 when she went to answer the nature's call the present applicant alongwith other co-accused have committed sexual intercourse with her against her will and thereby committed the aforesaid offence.
3. Learned counsel for the applicant submits that the applicant has been falsely implicated as he has not committed any offence. The date of incident 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 in

lodging the FIR. He further submits that the false FIR has been lodged because of the enmity by the complainant side. He also submits that applicant is in jail since 3.11.2020. It is lastly submitted that MLC report of the prosecutrix does not support the case of the prosecution in which doctor has opined that there was no injury found in the private part of the prosecutrix and hymn was also intact. Therefore, the applicant is entitled to be released on regular bail.

4. On the other hand, learned State Counsel opposes the prayer for grant of bail and submits that the statements of prosecutrix recorded under Sections 161 & 164 of Cr.P.C. are clearly against the applicant. He further submits that the age of the prosecutrix is less than 16 years on the date of incident. The medical examination of the prosecutrix has been done after two years from the date the incident, hence, there is no possibility of finding any recent injury or no opinion can be given regarding recent intercourse. The delay in lodging the FIR has been explained properly by the victim in her statement wherein she stated that even after the incident the applicants continued committed illegality with her which has compelled her to register the FIR.
5. Considering the submission that the FIR delayed by two years although the FIR is delayed about two years, but the prosecutrix has attempted to explain the delay which shall be subjected 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 delay in lodging an FIR in a rape cases is not of much "significance" as the victim has to muster courage to come out in open and expose herself in a "conservative social milieu". It is also a matter of common law that in Indian Society any girl or woman would not make such allegations against a person as she is fully aware of the repercussions flowing therefrom. If she is found to be false, she would be looked by the society with contempt throughout her life. For an unmarried girl, it will be difficult to find a suitable groom. Therefore, unless an offence has really been committed, a girl or a woman would be extremely reluctant even to admit that any such incident had taken place which is likely to reflect on her chastity.
6. Considering these aspects of social effect of rape, the girl after

collecting courage has made report, therefore, it cannot be said that delay in filing FIR has not been explained properly by the prosecutrix. In these facts and circumstances, I am not inclined to grant bail to the applicant.

7. It is pertinent to mention here that bail of similarly situated co-accused namely Shekhar Chelkar has been rejected by the Coordinate Bench of this Court in MCRC No. 354/2021 vide order dated 24.2.2021. Accordingly, the bail application filed by the applicant is rejected.

Sd/-

(Narendra Kumar Vyas)
Judge