

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No.415 of 2021**

- Hardev Ram Kumhariya S/o Late Ramsunder Aged About 41 Years R/o Karkepa, Thana Pasta , District Balrampur Ramanujganj Chhattisgarh., District : Balrampur, Chhattisgarh

---- **Petitioner****Versus**

- State Of Chhattisgarh Through Police Chouki Daura , Police Station - Pasta District Balrampur Ramanujganj Chhattisgarh., District : Balrampur, Chhattisgarh

---- **Respondent**

For Applicant	:	Shri A. K. Yadav, Advocate
For Respondent/State	:	Smt. Fouzia Mirza, Additional AG

Single Bench: Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****13/04/2021**

Heard.

1. The applicant has moved this application under Section 439 of the Cr.P.C. for grant of regular bail in connection with Crime No.17/2020 registered at Police Station Pasta, District Balrampur-Ramanujganj for the offence punishable under Section 450, 376, 506 of the IPC. The applicant was arrested on 23-03-2020.
2. This is a repeat application for grant of bail filed by the applicant. Earlier bail application was rejected by this Court on 24-08-2020.
3. Prosecution case is that the present applicant entered the house of the prosecutrix and committed rape on her.
4. Learned counsel for the applicant would submit that when bail application was filed before the Court below, which was rejected and then another bail application (MCRC No.3452 of 2020) was filed before this Court, which was also rejected by this Court on 24-08-2020, it was not within the notice of the mother of the applicant, who instructed the counsel in the lower Court as well as before this Court to file bail application that the proceedings under Section 151 Cr.P.C. were already drawn against the present applicant on the complaint of the husband of the prosecutrix and in those proceedings, statements of the prosecutrix and her husband and the present applicant were recorded. It is

argued that in fact, earlier on the report given in the police station, an Ishtagasha was submitted before the Sub Divisional Magistrate, Ramanujganj on 19-03-2020 by the Police Outpost Pasta against the present applicant leading to drawal of proceedings under Section 107 & 116 of Cr.P.C., in which, bail was granted to the applicant. In those proceedings, which were instituted prior to lodging of FIR in the present case and the statement recorded therein, there is no allegation made by the prosecutrix or her husband regarding commission of rape, but only after the applicant was released on bail by the Sub Divisional Magistrate vide order dated 19-03-2020, FIR has been lodged in the present case on 22-03-2020. It is, therefore, a clear case of false implication, because of other disputes.

5. This repeat application for grant of bail has been moved only when these facts came to the notice of the mother of the accused.

6. On the other hand, learned State counsel submitted that neither before the Court below nor before this Court, in earlier round of proceedings, in the application for grant of bail, the aforesaid facts were brought to the notice of the Court. It is further submitted that though, initially proceedings under Section 107 & 116 of Cr.P.C. were drawn against the present applicant on the complaint made by the husband of the prosecutrix, but, later on, the prosecutrix has made specific allegation in the FIR lodged in the police station on 22-03-2020 and her statement under Section 164 of Cr.P.C. has also been recorded before the Magistrate on 24-03-2020 and there also, the prosecutrix has made emphatic allegation.

7. It appears that initially, when the bail application was filed by the applicant before the Court below on the basis of instructions given by the mother of the applicant, the bail application was considered and rejected by the Court below and thereafter, application for grant of bail was filed before this Court on the instructions of mother of the applicant, which was also rejected by this Court on 24-08-2020.

8. However, the facts regarding institution of proceedings before the Sub Divisional Magistrate were not brought to the notice of this Court or to the notice of the Court below. The certified copies of the proceedings before the Sub Divisional Magistrate have now been placed on record before this Court, from which, it is prima facie seen that an Ishtagasha was filed before the Sub Divisional Magistrate, Ramanujganj on 19-03-2020 on the basis of complaint made against the present applicant by the husband of the prosecutrix, in which, the applicant was involved in abusing in state of intoxication. The learned Sub Divisional Magistrate accordingly initiated the proceedings of Section 107 & 116

of Cr.P.C. against the present applicant and he was released on bail on furnishing personal bond as well as surety vide order dated 19-03-2020. A perusal of Ishtagasha recorded on the basis of statement of Sandeep Singh, husband of the prosecutrix, Binita Kashi, the prosecutrix, shows that the applicant was involved in abusing and harassing the wife of the complainant taking undue advantage of she being alone in the house. This has also been recorded in the Rojnamchasanha dated 18-03-2020. The statements of prosecutrix-Binita Kashi, her husband-Sandeep Singh and the present applicant-Hardev were also recorded in those proceedings. In all these statements, there is no allegation of commission of rape on the prosecutrix by the present applicant, but what has been stated is that on 18-03-2020, the applicant came in intoxicated condition and abused the husband of the prosecutrix and also harassing the prosecutrix.

9. FIR has been lodged against the present applicant on 22-03-2020 making allegation of commission of offence of rape, which was not there in the complaint earlier lodged by the husband of the prosecutrix or in the statement of the prosecutrix or her husband, which was recorded in the proceedings before the Sub Divisional Magistrate prior to lodging of FIR on 22-03-2020.

10. These facts and authentic documents, veracity of which is not in doubt from the State side, were not brought to the notice of this Court earlier. Therefore, in the considered opinion of this Court, the present is a fit case for grant of bail.

11. Accordingly, the application is allowed. It is ordered that the applicant shall be released on bail on furnishing a personal bond of Rs.25,000/- along with one local surety of the like amount to the satisfaction of the concerned trial Court on the condition that he shall appear before the trial Court regularly on each and every date of hearing, unless exempted.

Certified copy as per rules.

SD/-
(**Manindra Mohan Shrivastava**)
Judge