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HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C. No. 254 of 2021**

Paras Yadav S/o- Santosh Yadav Aged About 24 Years R/o- Fandwani, P.S.
And District - Mungeli, Chhattisgarh

---- Applicant**Versus**

State Of Chhattisgarh Through Officer-In-Charge Of P.S.- City Kotwali Of
Mungeli, Dist.- Mungeli Chhattisgarh.

---- Respondent**And****Cr.M.P. No. 212 of 2021**

“MXV” D/o Naresh Kumar Sahu Aged About 17 Years Through Legal
Guardian Naresh Kumar Sahu R/o Village Fandwani, Police Station
Mungeli, District Mungeli Chhattisgarh.

---- Petitioner**Vs**

1. State Of Chhattisgarh Through Police Station City Kotwali, Mungeli District
Mungeli Chhattisgarh.
2. Netram Sahu S/o Late Matookram Sahu Aged About 29 Years R/o Village
Fandwani, Police Station Mungeli, District Mungeli Chhattisgarh.

---- Respondents**And****Cr.M.P. No. 267 of 2021**

MXV (Description of the petitioner submitted in a closed envelop)

---- Petitioner**Vs**

1. State Of Chhattisgarh Through Police Station City Kotwali, Mungeli District
Mungeli Chhattisgarh.
2. Parmendra Sahu S/o Chaituram, Aged About 28 Years R/o Village -
Fandwani, Police Station - Mungeli, District - Mungeli Chhattisgarh.

---- Respondents

For the Applicant	:	Shri Pallav Mishra, Advocate in M.Cr.C. No.254 of 2021.
For the Petitioners	:	Dr. Shailesh Ahuja, Advocate in Cr.M.P. Nos. 212 and 267 of 2021.

For Respondent No.2 in Cr.M.P.
Nos. 212 and 267 of 2021 : Shri Pallav Mishra, Advocate.
For the Respondent/State : Shri Jitendra Shukla, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

ORDER

06.04.2021

Heard.

1. This M.Cr.C. and both the Cr.M.P.s are being decided by this common order as they arise from the same crime number i.e. Crime No.529 of 2020 registered at police station City Kotwali, Mungeli, District Mungeli, Chhattisgarh for the offences punishable under Sections 363, 366 and 376/34 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences

Act, 2012.

2. Learned counsel for the applicant in M.Cr.C. No. 254 of 2021 submits that the applicant is innocent and has been falsely implicated in this case. The statement of the prosecutrix under Section 164 of the Cr.P.C. does not make any allegation against this applicant regarding commission of offence by him. The other co-accused persons in this case have been granted bail by the trial Court, therefore, it is prayed that the applicant be enlarged on regular bail.

3. Learned counsel for the objector raises objection for grant of bail to the applicant. It is submitted that this applicant is a hardened criminal and is continuously conveying threats to the complainant and the victim. It is further submitted that regarding the other co-accused persons who have

been granted bail by the trial Court itself, the complainant had filed Cr.M.P. under Section 482 of the Cr.P.C for cancellation of their bail, hence, this bail application may be rejected.

4. Learned counsel for the petitioner in Cr.M.P. Nos. 212 and 267 of 2021 submits that respondent No.2 in both the cases have conspired with main accused – Paras Yadav, who is the applicant in M.Cr.C. No. 254 of 2021 abducted the minor prosecutrix and then subjected her to rape. The applicant had appeared and opposed the bail application before the trial Court but the same has not been considered. Respondent No.2 in both the cases are habitual offenders, therefore, they are not entitled for grant of bail. Learned trial Court has granted bail to these respondents in both the cases on erroneous consideration and the bail granted to respondent No.2 in both the cases deserves to be canceled. Hence, it is prayed that this petition be allowed and the relief be granted accordingly.

5. Learned counsel for the applicant in M.Cr.C. No. 254 of 2021 and counsel for respondent No.2 in Cr.M.P. Nos. 212 and 267 of 2021 opposes the submissions and submits that the order granting bail by the trial Court does not suffer from any infirmity. The allegation made by the petitioner in Cr.M.P. Nos. 212 and 267 of 2021 is baseless. The applicant in M.Cr.C. No.254 of 2021 is entitled for grant of bail whereas, Cr.M.P. Nos. 212 and 267 of 2021 are without any substance, which may be dismissed.

6. The prosecutrix aged about 16 years 6 months went missing on 11.9.2020 regarding which, a missing report and FIR was lodged by her father Naresh Sahu on 14.9.2020. The prosecutrix was then recovered on

25.9.2020 from the custody of applicant – Paras Yadav. The prosecutrix gave a statement under Section 161 of the Cr.P.C. on 25.9.2020 that she was abducted and raped by applicant – Paras Yadav. The names of respondent No.2 in Cr.M.P. Nos. 212 and 267 of 2021 appeared in the statement of the prosecutrix under Section 164 of the Cr.P.C. that they were the persons who abducted her and took her to main accused – Paras Yadav.

7. Considered on the submissions. The statement of the prosecutrix is consistent against applicant – Paras Yadav under Sections 161 as well as 164 of the Cr.P.C. alleging the acts committed by him, therefore, I do not find that applicant – Paras Yadav in M.Cr.C. No. 254 of 2021 entitled for grant of regular bail. Hence, the M.Cr.C. i.e. the bail application of applicant – Paras Yadav is rejected.

8. Learned counsel for the petitioners in Cr.M.P. Nos.212 and 267 of 2021 has referred to the statement of the prosecutrix in the Court, in which she has made allegations against respondent No.2 in both the cases that they have also raped her. This is a new development which had not been present in her previous statements under Sections 161 and 164 of the Cr.P.C. Further, both the applications under Section 482 of the Cr.P.C. have been directly filed before this Court praying for cancellation of bail whereas, the applicant in both the cases had remedy available to file an application under Section 439(2) of the Cr.P.C. before the same Court praying for cancellation of bail. Cancellation of bail involves the review of a decision already taken by the Court and such review purported under Section 439 of the Cr.P.C., as the bail was granted by the trial Court the review has also to be necessarily made by the trial Court itself. It is clearly held by the

Supreme Court in the case of **Municipal Corporation of Delhi vs. Ram Kishan Rohtagi and Ors.**, reported in **AIR 1983 SC 67**, that in case of availability of statutory remedy, Section 482 of the Cr.P.C. cannot be invoked. Hence, without making any comments on the petitions filed under Section 482 of the Cr.P.C. by the petitioner in these cases, both the applications are disposed off.

9. Accordingly, M.Cr.C. No. 254 of 2021 is rejected and Cr.M.P. Nos. 212 and 267 of 2021 are disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge