

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.Cr.C. No.1398 of 2021

- Ashwani Dadsena S/o Late Gambhir Ram Dadsena Aged About 51 Years R/o Amarpuri Chowk, Sundar Nagar, Raipur, District- Raipur, C.G. Permanent R/o Village- Angaari, P.S. And District- Balod, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through District Magistrate District- Durg, Chhattisgarh

---- Non-applicant

For Applicant : Mr. B.P. Singh, Advocate.

For Non-applicant/State : Ms. Shivali Dubey, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

25-02-2021

Heard.

1. Learned counsel for the State submits that case diary is available. Both the learned counsel have agreed to make their submissions.
2. Also heard on the application filed under Section 439 of the Cr.P.C. This is the first bail application filed for grant of regular bail. The applicant has been arrested on 27.11.2020, in connection with Crime No.479/2020 registered at Police Station—Bhilai Nagar, District- Durg, C.G. for offence punishable under Sections 376(2)(n) and 506 of I.P.C. and Sections 4, 6(I) of the POCSO Act.
3. It is submitted by the learned counsel for the applicant that the applicant is innocent and has been falsely implicated in this case because of his previous enmity with the uncle of the prosecutrix. One Criminal Case under Section 376 r/w 34 of I.P.C. was registered in Police Station- Urandabeda, District- Kondagaon, C.G., in Crime No.02/2016, in which

the uncle of the prosecutrix was one of the accused and this applicant was a witness. The applicant was threatened by the uncle of the prosecutrix regarding which, he lodged one F.I.R. which was registered as Crime No.514 of 2016 for offences under Sections 195(A) and 506, 34 of I.P.C. in Police Station- Balod, District- Balod, C.G. against the uncle of the prosecutrix. In this case, the applicant had complained that he has been threatened to be implicated in false offences of rape. The applicant has also lodged another complaint against the uncle of the prosecutrix, which has been registered as Crime No.242 of 2016 for the offence under Section 507 of I.P.C. in Police Station- Amanaka, District- Raipur, C.G. It is submitted that Parasram Sahu, who is the uncle of prosecutrix, is also the guardian of the prosecutrix, who has used her for lodging this false F.I.R. against the applicant.

4. It is further submitted that in the present case, the date of incident is mentioned as 16.08.2020, whereas F.I.R. has been lodged on 26.11.2020 after a delay of more than three months, regarding which there is no explanation. The prosecutrix in this case is not minor, she has married with one Khomendra Vishwakarma on 13.01.2021 and in the certificate given by the Arya Samaj, Raipur, her age is mentioned as 19 years. The delay in lodging F.I.R. has not been explained. Medical report of the prosecutrix is inconclusive. The applicant is in jail since 27.11.2020 and ready to abide by all conditions which may be imposed upon him for grant of bail. Therefore, it is prayed that he may be granted bail.
5. Learned counsel for the State/non-applicant opposes the application and submits that the statement of the prosecutrix in the written complaint, her statement under Section 161 of Cr.P.C. and under Section 164 of Cr.P.C. are consistent and against the applicant regarding the commission of offence of rape by him. The ground of

enmity with the uncle of the prosecutrix is a ground of defence which can be examined only in the trial. The probability or improbability of the story of prosecution is also subject to scrutiny by the trial Court only. Hence, there is no case for grant of bail to the applicant.

6. Heard learned counsel for the parties and perused the case diary.
7. According to the prosecution case, the prosecutrix aged about 17 years has lodged F.I.R., that on a day between 16th August and 23 August, 2020, she had been to the Civic Centre, Bhilai, for making purchase of some clothes, where this applicant was present. This applicant offered her to take a ride of the Civic Centre with him and then finding a lonely bushy place, he took the prosecutrix by force and raped her by putting her under threat. The prosecutrix could not tell about this incident to anybody because of the threat given. Later on she gathered courage and told about this incident to her uncle and then this F.I.R. has been lodged. Hence, this case.
8. Considered on the submissions. Although, there is ground of enmity present but the same is between the applicant and the uncle of the prosecutrix. Looking to the consistency of the statement of prosecutrix in her written complaint and the other statement in investigation, I am of this view that it is not a good case for grant of bail to the applicant, therefore, the present application is rejected.
9. Consequently, this application filed by the applicants under Section 439 of the Cr.P.C. for grant of regular bail is hereby rejected.
10. Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge