

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 4421 of 2021

- Pramod Vishwakarma S/o Manoj Vishwakarma, Aged About 19 Years, Caste - Lohar, R/o Village Parri, P.S. and Tahsil - Surajpur, District - Surajpur Chhattisgarh, District : Surajpur, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh, Through Arakshi Kendra, Surajpur, District Surajpur Chhattisgarh, District : Surajpur, Chhattisgarh

---- Non-applicant

MCRC No. 4692 of 2021

- Prithvi Dewangan S/o Pawan Dewangan, Aged About 19 Years, Caste Panika, R/o Village Parri, P.S. Tahsil and District Surajpur Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh, Through S.H.O., Police Station (Kotwali) Surajpur, District Surajpur Chhattisgarh., District : Surajpur, Chhattisgarh

---- Non-applicant

For Applicant – Shri Gyan Prakash Shukla, Advocate in MCRC No.4421 of 2021.
Shri Ashok Kumar Shukla, Advocate in MCRC No.4692 of 2021.

For State/Non-applicant – Shri Anil Tripathi, Panel Lawyer.

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

27-08-2021

1. As both these applications arise out of the same crime number, they are being decided by this common order.
2. Both these applications under Section 439 of the Cr.P.C are first bail applications before this Court filed by these applicants for grant of regular bail.

MCRC No. 4421 of 2021 has been filed by the applicant Pramod Vishwakarma as he has been arrested on 01-01-2021 in connection with Crime No.556/2020 registered at Police Station – Arakshi Kendra Surajpur, District Surajpur, Chhattisgarh for the offence under Section 341, 323, 342, 365, 376(D) of the IPC and Section 3(1)(w)(i) & Section 3(2) of the Atrocities Act and Section 4 & 6 of POCSO Act.

MCRC No. 4692 of 2021 has been filed by applicant Prithvi Dewangan as he has been arrested on 01-01-2021 in connection with Crime No.556/2020 registered at Police Station – Surajpur, District Surajpur, Chhattisgarh for the offence under Section 341, 323, 342, 365, 376(घ) of the IPC and Section 3(1) (क)(1), 3(2) of Prevention of (S.C./S.T.) Atrocities Act and Section 4 & 6 of the Protection of Children from Sexual Offences Act, 2012.

3. Learned counsel for applicant Pramod Vishwakarma in MCRC No.4421 of 2021 that there is no case present against this applicant. The prosecutrix has been examined in the trial and in her deposition she has not named this applicant as the person who has raped her. Similarly placed co-accused namely Vikas Kushwaha has been granted bail by this Court. Hence, it is prayed that this applicant may also be granted bail.

4. Learned counsel for applicant Prithvi Dewangan in MCRC No.4692 of 2021 submits that this applicant has been falsely implicated. Name of this applicant has not appeared in the FIR, in the statement of the prosecutrix under Section 161 and 164 of the Cr.P.C. The medical report of the prosecutrix does not report any injury on the body of the prosecutrix. Therefore, there is no case present against this applicant. Hence, it is prayed that this applicant be granted bail.

5. Learned counsel for the State/non-applicant opposes the applications submitting that the age of the prosecutrix had been 16 years and further, she has identified all the accused persons in the test identification parade. Her statement under Section 161 and 164 of the Cr.P.C. is very clear and categorical that she was gang raped and the MLC report also mentions that there is presence of recent intercourse. Hence, there is no case present for grant of bail. Therefore, both the applications may be rejected.

6. The prosecutrix and her mother both are virtually present through Help Desk of DLSA Surajpur. They have no objection in grant of bail to these

applicants.

7. Heard learned counsel for the parties and perused the case diary.

8. According to the prosecution case, on the date of incident the minor prosecutrix was gang raped by two persons. Those two persons have called their friends who also gang raped the minor victim. After lodging of the FIR, the accused persons including these applicants have been identified in the test identification parade. Hence, this case.

9. Considered on the submissions. On perusal of certified copy of the deposition of the prosecutrix, it is found that she has not named applicant Pramod Vishwakarma (applicant in MCRC No.4421 of 2021) as the person who has raped her. However, she has made statement against applicant Prithvi Dewangan (applicant in MCRC No.4692 of 2021). One co-accused Vikas Kushwaha has been granted bail only on this ground that he has not been named by the prosecutrix as the person who has raped her, hence, on the similar ground I feel inclined to allow the application for grant of regular bail filed by applicant Pramod Vishwakarma. However, I am of this view that the application of applicant Prithvi Dewangan is not fit to be allowed.

10. Consequently, MCRC No.4421 of 2021 filed under Section 439 of the Cr.P.C. by applicant Pramod Vishwakarma for grant of regular bail is hereby allowed. It is directed that this applicant shall be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Court, for his appearance as and when directed.

MCRC No. 4692 of 2021 filed under Section 439 of the Cr.P.C. by applicant Prithvi Dewangan for grant of regular bail is rejected.

11. Certified copy as per rules.

Sd/-

(Rajendra Chandra Singh Samant)
Judge