

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 5619 of 2021

1. Nageshwar Patel S/o Mahesh Ram Aged About 25 Years, R/o Village Dhobni, Police Station Sarsiwa, District Baloda Bazar-Bhatapara Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh
2. Nand Lal Yadav S/o Ghasiya, Aged About 28 Years, R/o Village Dhobni, Police Station Sarsiwa, District Baloda Bazar-Bhatapara Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh

---- Applicants

Versus

- State Of Chhattisgarh Through S.H.O. P.S. Sarsiwa, District Baloda Bazar-Bhatapara., District : Balodabazar-Bhathapara, Chhattisgarh

---- Non-applicant

For Applicants – Shri Chitendra Singh, Advocate.

For Non-applicant/State – Shri Ajay Kumarani, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

15-09-2021

1. Heard on the application filed under Section 439 of the Cr.P.C. This is second bail application before this Court filed by the applicants for grant of regular bail. The applicants have been arrested on 08-12-2019 in connection with Crime No.404/2019 registered at P.S. - Sarsiwa, District Baloda Bazar-Bhatapara, Chhattisgarh for the offence under Section 363, 366, 376(d) of the IPC and Section 4, 6 of POCSO Act.

2. It is submitted on behalf of the applicants, this is second bail application filed by the applicants before this Court. Their first bail application MCRC No.1620/2020 was dismissed on merits on 30-06-2020. Learned counsel for the applicants submits that at present the circumstances have changed in favour of the applicants. The prosecutrix has been examined in the trial, she has very clearly not mentioned the name of applicant No.2 as the person who has raped her and as regards the statement against applicant No.1, the same is not reliable statement of the prosecutrix. Some of the co-accused persons have been granted bail by this Court on the basis of the Court statement of the

prosecutrix. Therefore, it is prayed that these applicants may also be granted bail.

3. Learned counsel for the State/non-applicant opposes the application and submits that the prosecutrix has mentioned presence of both the applicants in her cross-examination by the prosecutor, which shows participation of applicant No.2 also in commission of offence of rape. Further, she had clearly stated against applicant No.1 and 2 both in her statement under Section 164 of the Cr.P.C. Further, at the time of commission of offence the age of the prosecutrix had been 15 years and 5 months only. Therefore, there is no case present for grant of bail to these applicants.

4. Notice issued to the complainant was returned served for 02-09-2021 on which date there was no appearance and no representation.

5. Heard learned counsel for the parties and perused the documents.

6. Considered on the submissions and perused certified copy of the deposition of the prosecutrix herself. Taking into consideration her statement given I am of this view that applicant No.2 has now become entitled for grant of bail as the circumstances have changed in his favour, but the circumstances have not changed in favour of applicant No.1.

7. Consequently, the prayer made by applicant No.1 for grant of regular bail is rejected. The prayer made by applicant No.2 Nand Lal Yadav for grant of regular bail is allowed. It is directed that applicant No.2 Nand Lal Yadav 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.

9. Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge