

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

(Proceeding through Video Conferencing)

M.Cr.C. No. 5682 of 2021

- Sukhnandan Nishad, S/o Bisahu Nishad, aged about 33 years, Residence of village Rahtator, P.S. Pachpedi, District – Bilaspur (C.G.)

---- Applicant

Versus

- State of Chhattisgarh Through Police Station – Bilha, District - Bilaspur (C.G.)

---- State/Non-Applicant

For Applicant	:	Shri G.L. Uike, Advocate
For Non-Applicant/State	:	Ms. Deepti Shukla, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya, J
Order on Board

25.08.2021

1. The applicant has preferred this first bail application under Section 439 of Cr.P.C. as he is in jail since 16.07.2021 in connection with Crime No. 167/2021 registered in Police Station- Bilha, District Bilaspur (CG) for the offence punishable under Section 376 (d) of IPC.
2. As per prosecution case, on 15.07.2021 prosecutrix submitted a written report before Bilha Police Stations stating that on the said date at about 02:30 pm she was going to Mangla from village alongwith her sister, on the way Pushnah Narwa, her uncle Navin met her. When she was talking with her uncle, at that time, accused persons Avtaar Nishad, Manoj, Pradeep Barga came there and told her, she was talking with Navin, she should talk us otherwise they would defame her in village. The accused also threatened to beat her uncle and sister Darasmati. Her uncle and sister moved from there. Just thereafter accused Punit, Pawan, Devkumar and Sukhnandan Nishad came there and Punit caught hold of her hand, took her toward bushes, fallen her down on the ground. It is alleged that Pawan, Devkumar

and Punit all forcefully removed her clothes, Devkumar caught hold of her hands and Pawan caught hold of her legs, thereafter, Punit committed forcible sexual intercourse against her. At the time of incident, accused Awtaar, Pradeep, Manoj and the present applicant were standing there and were seeing. When the prosecutrix any how escaped from the accused, she lodged the report against the accused persons in Police Station Bilha.

3. Learned counsel for the applicant submit that the applicant has been falsely implicated in this crime. He submits that the complainant is a major girl/lady and as per report, the applicant has not committed rape with the prosecutrix, only allegation against the applicant is that at the time of incident he was present and had seen the offence alongwith other accused persons. He also submits that he is languishing in jail since 16.07.2021, and conclusion of the trial is likely to take some time. Therefore, the applicant be released on bail.
4. On the other hand, learned counsel for the State opposes the bail application..
5. Heard learned counsel for the parties.
6. Having regard to the facts and circumstances of the case, the fact that as per 164 Cr.P.C. statement of the prosecutrix and written report submitted before the police, there is no allegation against the present applicant regarding committing of forcible sexual intercourse by him with the prosecutrix, nor any active participation shown in the F.I.R., the prosecutrix made allegation that at the time incident, accused persons took her towards bushes, where accused Devkumar, Pawan and Punit removed her clothes, thereafter Devkumar and Pawan caught holds of her hands and legs and Punit committed rape against her, only she made allegation against the applicant is that he was standing at the spot and was seeing the incident, that the detention period of the present applicant who is 33 years old, conclusion of the trial is likely to take some time, and the fact that there is no apprehension of the applicant tampering with the evidence or absconding as

admitted by both the counsels, without expressing any opinion on merits of the case, the application is allowed.

7. It is directed that in the event of applicant executing a personal bond for a sum of Rs.1,00,000/- with two sureties of Rs.50,000/- each to the satisfaction of the concerned Trial Court, he shall be released on bail, on following conditions :-

- i. he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such fact to the Court.
- ii. he shall not act in any manner which will be prejudicial to fair and expeditious trial, and
- iii. he shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.
- iv. he shall strictly follow the COVID-19 protocol issued by the Central Government / State Government / Local Authority.
- v. he shall not involve himself in any offence of similar nature in future.

8. Let a copy of this order be forwarded to the concerned Police Station forthwith who shall inform the trial Court in the event of applicant involving himself in similar nature of offence.

Sd/-

(Gautam Chourdiya)
Judge