

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 6381 of 2021

- Bhuneshwar Yadav S/o Shri Urdo Ram, Aged About 22 Years, at - Village Jadapadar, Police Station Mainpur, District Gariyaband, Chhattisgarh., District : Gariyabandh, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh, through Station House Officer Police Station Mainpur, District Gariyaband, Chhattisgarh., District : Gariyabandh, Chhattisgarh

----Non-applicant

For Applicant – Shri Lukesh Kumar Mishra, Advocate.

For Non-applicant/State – Shri Amit Kumar Verma, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

06-10-2021

1. Heard on the application filed under Section 439 of the Cr.P.C. This is first bail application before this Court filed by the applicant for grant of regular bail. The applicant has been arrested on 01-12-2020 in connection with Crime No.51/20 registered at Police Station - Mainpur, District Gariyaband, Chhattisgarh for the offence under Section 450, 376(2)(n) of the IPC, Section 6 of POCSO Act and Section 3(2)(v) of the SC/ST Act (as per challan).

2. It is submitted by learned counsel for the applicant that the applicant is innocent and he has been falsely implicated in this case. The date of incident is mentioned as 10-07-2020, whereas, the FIR was lodged on 12-07-2020, which is clearly delayed. The story of the prosecution is improbable. The place of incident which is shown in the spot map shows only one room which had other occupants also, otherwise the prosecutrix had been consensual in the physical relation as she never raised any alarm. Reliance has been placed on behalf of the applicants on the judgment of Hon'ble the Supreme Court in the matter of **Tameezuddin @ Tammu Vs. State of (Nct) of Delhi**, 2009 CJ(SC) 1777.

Reliance has been also placed on the judgment delivered by Calcutta

High Court in **C.R.A. No.458 of 2018** on 17-09-2021 (Ranjit Rajbanshi Vs. The State of West Bengal and others).

On behalf of the applicant reliance has also been placed on the order of the High Court of M.P. : Bench at Indore in **M.CR.C. No.41304/2021** dated 09-09-2021 (Rakesh S/o Ambaram Vs. State of M.P.). Further, reliance has been placed on the order of Bombay High Court passed in **Criminal Bail application No.2632 of 2019** on 09th January, 2020 (Anirudha Radheshyam Yadav Vs. The State of Maharashtra). Reliance has also been placed on the order delivered by High Court of Himachal Pradesh, Shimla in Cr.MP(M) No.77 of 2021 on 04-02-2021 (Virendra Singh Vs. State of H.P.) and also on the order of High Court of Himachal Pradesh, Shimla passed in **Cr.MP(M) No.2013 of 2020** on 12th November, 2020 (Shri Karan Vs. State of Himachal Pradesh) and it is prayed that this applicant may be granted bail.

3. Learned counsel for the State/non-applicant opposes the application and the submission made in that respect. It is submitted that the prosecutrix was minor of age about 16 years and further, there is clear statement made by her that she was forcibly raped by the applicant. Therefore, there is no issue of any consent. The improbability of the story as submitted by the applicant's counsel is subject to examination by the trial Court. Hence, the application may be rejected.

4. The prosecutrix had virtually present before this Court on 27-09-2021 and she has objected to grant of bail to this applicant.

5. According to the prosecution case, the minor prosecutrix was residing in the house of her maternal grand-father for some time. It is alleged that in the month of April, 2020 this applicant committed house trespass in the house of the minor prosecutrix and forcibly raped her without her willingness and consent. The prosecutrix became pregnant and this pregnancy was discovered in the month of July, 2020, subsequent to which, the FIR was lodged.

6. Considered on the submissions. There are facts and circumstances clearly present against this applicant in the form of evidence collected in the investigation. The case laws cited by the applicant's counsel are findings based on the facts, hence, guidance of the same cannot be taken in the present case. Therefore, I do not feel inclined to allow this application.

7. Consequently, this application filed by the applicant under Section 439 of the Cr.P.C. for grant of regular bail is hereby rejected.

Sd/-

(Rajendra Chandra Singh Samant)
Judge