

HIGH COURT OF CHHATTISGARH, BILASPUR**M.CR.C. No. 6447 of 2021**

1. Asdev, S/o. Komal Dahariya, aged about 21 years, R/o. Village- Kumhi, Police Station- Pandatarai, District- Kabirdham, Chhattisgarh.
2. Phoolsingh Dahariya, S/o. Khelanwa, aged about 62 years, R/o. Village- Kumhi, Police Station- Pandatarai, District- Kabirdham, Chhattisgarh.

---- Applicants**Versus**

State of Chhattisgarh, Through - Station House Officer, Police Station- Pandatarai, District- Kabirdham, Chhattisgarh.

---- Respondent

For Applicants : Mr. Dharmesh Shrivastava, Advocate

For Respondent/State : Ms. Shivali Dubey, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board**28/09/2021**

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicants, who have been arrested in connection with Crime No.148/2021, registered at Police Station – Pandatarai, District -Kabirdham (C.G.) for the offence punishable under Section 363, 376, 34 of the Indian Penal Code and Section 4 of Protection of Children from Sexual Offences Act, 2012.
2. It is submitted by the learned counsel for the applicants that the applicants have been falsely implicated in this case. The applicants are

in jail since 20.07.2021 and 22.07.2021 respectively. The statement of the prosecutrix under Section 164 of Cr.P.C. mentions about the only commission of offence of abduction by the applicants and there is no allegation of rape. Therefore, the case against the applicants is false. Hence, it is prayed that the applicants may be released on bail.

3. On the other hand, learned counsel for the State opposes the bail application and the submissions made in this respect. It is submitted that the statement of the prosecutrix under Section 161 of Cr.P.C. is clear regarding commission of offence of abduction by both the applicants and rape by the applicant No.1. The prosecutrix is minor age about 13 years only, therefore, this application be rejected.
4. The minor prosecutrix is virtually present before this Court on notice through DLSA, Kabirdham, District – Kawardha. She has objection in grant of bail to the applicants.
5. I have heard the learned counsel for both the parties and perused the case diary.
6. As per the prosecution case, it is alleged that on the date of incident, the applicants abducted the minor prosecutrix and took her to their house in the motor cycle and was kept in confinement and she was raped by the applicant No.1.
7. Considered on the submissions. The statement of the prosecutrix under Section 164 of Cr.P.C. clearly omits the allegation of rape against the applicant No.1. Therefore, looking to this kind of development in her statement, this Court is of the opinion that present is a fit case, in which, the applicants should be enlarged on regular bail.

8. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed.
9. It is directed that applicants shall be released on bail on their furnishing a personal bond in the sum of Rs.25,000/- with one surety each in the like sum to the satisfaction of the concerned trial Court, for their appearance as and when directed.

Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram