

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No.7774 of 2020**

- Dharmendra Korva Son Of Ramkewal Chargat Aged About 26 Years R/o Village Uchrva, Police Station- Ramchandrapur, District- Balrampur-Ramanujganj (Chhattisgarh), District : Balrampur, Chhattisgarh

---- Petitioner**Versus**

- State Of Chhattisgarh Through - P.S. - Ramchandrapur, District- Balrampur-Ramanujganj (Chhattisgarh), District : Balrampur, Chhattisgarh

---- Respondent

For Applicant : Shri A. K. Yadav, Advocate
 For Respondent/State : Shri Amit Verma, PL

Single Bench: Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****22/01/2021**

Heard.

1. The applicant has moved this application under Section 439 of the Cr.P.C. for grant of regular bail in connection with Crime No.26/2020 registered at Police Station Ramchandrapur, District Balrampur-Ramanujganj for the offence punishable under Section 450, 376, 506 of the IPC. The applicant was arrested on 06-06-2020.
2. Prosecution case is that the present applicant entered the house of the prosecutrix and committed rape on her.
3. Learned counsel for the applicant would argue that the prosecution case, particularly details in the FIR, absence of injury on the body of the prosecutrix and what has been stated by the prosecutrix in her statement recorded under Section 164 of Cr.P.C. and statement of father-in-law and mother-in-law of the prosecutrix recorded under Section 161 of Cr.P.C., who were present in the house, shows that it is a case of consent, because only when the accused-applicant came out of the house, report has been lodged.
4. On the other hand, learned counsel for the State/non-applicant opposes the bail application by submitting that the FIR is based on a written complaint and the prosecutrix has stated that when she came out of the house in the night to respond the call of nature, the applicant entered the house, threatened her

and committed rape on her whereafter, she called for help from her father-in-law and mother-in-law, who were present in the house. Thereafter, the matter was reported in the police station.

5. On prima facie consideration, it is clear that the prosecutrix stated in her written complaint that the accused has entered in the house in the night and threatened and thereafter, committed rape on her, which was disclosed to her father-in-law and mother-in-law. In her statement recorded under Section 164 of Cr.P.C., the prosecutrix has stated that after the incident, her in-laws had come and then, the incident was disclosed. Further, case diary statement of father-in-law and mother-in-law of the prosecutrix is that in the night, they heard noise and came out of house and saw the accused leaving room of the prosecutrix and thereafter, the prosecutrix discloses the incident. No injury was found on the body of the prosecutrix. There is no allegation that the lock of the house was broken in the night and then, the applicant entered the house. Considering the aforesaid circumstances and the submission of learned counsel for the applicant that the present is a case of consent only when the applicant and the prosecutrix were caught in the night having sexual intercourse, the prosecutrix started making allegation, in my considered opinion, arguable case is made out as investigation is complete, charge sheet has been filed and the applicant is in jail since 06-06-2020.

6. Accordingly, the application is allowed. It is ordered that the applicant shall be released on bail on furnishing a personal bond of Rs.25,000/- along with two local surety of the like amount to the satisfaction of the concerned trial Court on the condition that he shall appear before the trial Court regularly on each and every date of hearing, unless exempted.

Certified copy as per rules.

SD/-
(**Manindra Mohan Shrivastava**)
Judge