

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.Cr.C. No.7747 of 2021

1. Abhishek Vayne @ Babu S/o Vijay Kumar Vayne Aged About 20 Years
2. Ashish Vayne @ Lala S/o Vijay Kumar Vayne Aged About 19 Years
3. Akash Vayne S/o Ajay Kumar Vayne Aged About 19 Years

[All are r/o Near Adiwasi Hostel, Pension Bada, Raipur, Police Station Kotwali, Raipur, District- Raipur (Chhattisgarh)]

---- Applicants

Versus

- State Of Chhattisgarh Through Police Station Kotwali, Raipur, District - Raipur (Chhattisgarh)

---- Non-applicant

For Applicants	: Mr. Kishore Narayan, Advocate.
For Non-applicant/State	: Mr. Soumya Rai, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order on Board

15-12-2021

Heard.

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 The previous application in M.Cr.C. No.1510 of 2021 was dismissed as withdrawn on 19.07.2021. The applicants have been arrested on 07.11.2020 in connection with Crime No.287/2020, registered at Police Station– Kotwali, Raipur, District- Raipur, C.G. for offence punishable under Sections 376(2)N and 376AB of the I.P.C. and Section 06 of the POCSO Act.

2. It is submitted by learned counsel for the applicants that applicants are innocent who have been falsely implicated in this case. The prosecutrix has been examined in the trial and she has not leveled any allegations against these applicants. Therefore, the applicants who are in jail since 07.11.2020 are entitled for grant of bail.
3. Learned counsel for the State/non-applicant opposes the application submitting that although the prosecutrix herself is a hostile witness but her mother has made statement against the applicants, therefore, the applicants are not entitled for grant of bail.
4. The complainant had appeared on 17.11.2021 and did not make any statement either in support or against the application filed by the applicants.
5. Heard learned counsel for the parties and perused the case diary.
6. According to the prosecution case, it is alleged that the minor prosecutrix is of age about 09 years who was sexually abused by these applicants by fingering in her private part regarding which F.I.R. has been lodged.
7. Considered on the submissions and also perused the certified copy deposition of the minor prosecutrix, she has been declared hostile by the prosecutor for not supporting the prosecution case against these applicants. The other material witness brother of the prosecutrix, who is also a minor has also not supported the prosecution case. Although the mother of the prosecutrix has given statement against the applicants but that is a hearsay evidence based on the information given by her son, who is a hostile witness. Therefore, looking to this development in trial, I feel inclined to allow this application.

8. Consequently, this application filed by the applicants under Section 439 of the Cr.P.C. for grant of regular bail is hereby allowed. It is directed that the 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 Court, for their appearance as and when directed.

9. Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika