

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 7752 of 2021**

- Shaikh Afsar @ Golu S/o Late Shri Shaikh Husan Kadar Aged About 20 Years R/o Kadarbada Gurunanak Chowk, P. S. Moudhapara, District Raipur Chhattisgarh

---- Applicant

Versus

- State of Chhattisgarh Through Police Station Mana Camp, District Raipur Chhattisgarh

---- Respondent

For Applicant	:	Mr. Pragalbha Sharma, Advocate.
For State	:	Mr. Avinash K. Mishra, Govt. Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas**Order on Board****27-10-2021**

1. The applicant has preferred this second bail application under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail as he has been arrested and is in jail since 19-11-2020 in connection with Crime No. 48 of 2020 registered in Police Station- Mana Camp, District Raipur (CG) for the offence punishable under Section 377 read with Section 34 of IPC.
2. On 25-06-2021 first bail application of the applicant was dismissed by this court.
3. As per the prosecution case, the allegation against the present applicant, who is a prisoner at the Child Protection Home at Mana Raipur, is that he along with other co-accused persons

committed an unnatural offence over the victim and tortured him both physically and mentally. Based on that, after investigation, offence has been registered against the applicant and he has been arrested.

4. Learned counsel for the applicant would submit that the complainant has been examined before the learned trial Court and he has been declared hostile and he denied the allegations made against the applicant. He would further submit that the appliance is in jail since 19-11-2020 and there is no likelihood of his case being decided in near future. He would further submit that the case of the present applicant is similar to that of other co-accused who has been granted regular bail vide order dated 15-9-2021 passed by co-ordinate Bench of this court in M.Cr.C 5606 of 2021, therefore, present applicant may also be granted bail on the ground of parity.
5. On the other hand, learned counsel for the State though opposes the bail application has not disputed the fact that the other co-accused person has been granted regular bail by co-ordinate Bench of this court.
6. I have heard learned counsel for the parties and perused the case diary.
7. Perusal of the case diary reveals that the complainant has nowhere stated in his statement recorded under Section 161 of Cr.P.C. before the Police about the involvement of present applicant and the complainant has been turned hostile.

8. Considering the totality of the facts and circumstances of the case, taking into consideration that the complainant has not supported the prosecution case before the trial court and that the applicant is in jail since 19-11-2020 and further considering the fact that other co-accused has also been granted bail by co-ordinate Bench of this court, I am of the view that it is a fit case to release the applicant on bail.
9. Accordingly, the bail application filed under Section 439 of Cr.P.C is allowed. It is directed that in the event of the applicant's furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned trial, he shall be released on bail. He is directed to appear before the trial Court on each and every date given to him by the said Court, till disposal of the trial.
10. Certified copy as per rules.

Sd/-

(Narendra Kumar Vyas)
Judge

Raju