

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 7853 of 2021

- Kumaruram Chelkar S/o Dular Das, Aged About 30 Years R/o Motimpur, Thana, Tahsil And District Mungeli Chhattisgarh., District : Mungeli, Chhattisgarh. **---- Applicant**

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station City Kotwali, Mungeli, District Mungeli Chhattisgarh, District : Mungeli, Chhattisgarh. **---- Non-Applicant**

For Applicant : Shri Pradeep Kumar Mishra, Advocate
For Non-Applicant/State : Shri Adil Minhaj, G.A.

Hon'ble Shri Justice Gautam Chourdiya

Order on Board

12.11.2021

Heard.

- 1) The First bail application of the applicant was dismissed on merit by this Court vide order dated 31.08.2021 in MCRC No. 4900 of 2021.
- 2) The applicant has preferred this Second Bail Application under Section 439 of Code of Criminal Procedure, 1973 as he is in jail since 22.02.2021 in connection with Crime No. 73/2021 registered at Police Station- City Kotwali, District- Mungeli (C.G.) for the offence punishable under Sections 323, 365, 376(d), 506 read with Section 34 of IPC.
- 3) Case of the prosecution, in brief, is that on 21.2.2021 the complainant/prosecutrix lodged a written report to the effect that on 16.2.2021 when she came out of the bank, the present applicant along with co-accused Pappu Banjare, Manish Diwaker and Mukesh having abducted her, took her in Wagon R Car bearing registration No.CG 28 L 1187 to the Court where on the threat of life she was forcibly made to sign on a stamp paper.

Thereafter, at about 8-9 pm she was taken to the house of co-accused Pappu Banjare and restrained there throughout the night. On the next day she was taken to the house of co-accused Mukesh at Village-Rehunta where the present applicant committed forcible sexual intercourse with her and also beat her with hands and fists. However, on 21.2.2021 while she was being taken in the car towards Lormi, the accused persons were caught by her brother-in-law (Jija) Anand Ram and brother Rakesh Patre as she had already informed about the incident to her brother-in-law over phone on 18.2.2021. On report being lodged to the above effect, the aforesaid offences have been registered against the accused persons.

4) Learned counsel for the applicant submits that the applicant is an innocent person and has been falsely implicated in this case. The incident is said to have taken place on 16.2.2021 whereas the report was lodged after four days on 21.2.2021 without any probable explanation for the said delay. The prosecutrix was a major lady of 30 years and looking to the manner in which the incident is allegedly committed, she appears to be a consenting party and as such, no offence of rape could be made out against the applicant. The prosecution case is not supported by the statement of stamp vendor, notary and other witnesses that her signature on the stamp paper was obtained forcibly. It is submitted that the prosecutrix is in the habit of lodging false reports for monetary benefits. In the past on 21.4.2019, she had also lodged a false report against her mother and sister. Co-accused Manish Kumar Diwaker and Mukesh Kumar Daharia have been granted bail by the Court below and co-accused Pappu Banjare has been granted bail by this Court vide order dated 10.6.2021 passed in MCrC No.2243/2021. The applicant is in jail since 22.2.2021 and conclusion of the trial is likely to take some time, therefore, the applicant be released on bail.

5) On the other hand, learned counsel for the Non-Applcant/State

opposes the bail application and submits that there is no change in the circumstances of the case. From the case diary it reveals that the prosecutrix and the applicant were jointly running a clothes shop in the name of Arya Collection in a rented accommodation and original agreement was kept by the applicant whereas copy of the same was given to the prosecutrix. As per the memorandum statements of accused persons and the diary statements of Anand Jangde, Rakesh Patre, Anil Diwaker, the applicant was seen with the prosecutrix in the vehicle Wagon R bearing registration No. CG 28 L 1187. As per MLC of the prosecutrix, she suffered injuries near her ear and right ankle joint. The prosecutrix has categorically stated that it is only the present applicant who committed forcible sexual intercourse with her in the house of co-accused Mukesh.

- 6) Thus, considering the facts and circumstances of the case, the nature of allegation against the applicant that he not only participated in abduction of the prosecutrix and extending threat of life to her but also had forcible sexual intercourse with her, which finds corroboration from her medical report; the case of the applicant being distinguishable on facts from the co-accused who have been released on bail by the Court below and by this Court, the other material available on record which are to be appreciated only during the course of trial, without commenting anything on merits of the case, this Court finds no change in the circumstances in favour of the applicants in entitling them for grant of bail, therefore, without commenting anything on merits of the case, the bail application is rejected.

Sd/-
(Gautam Chourdiya)
Judge