

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MCRC No.8100 of 2021

- Khageshwar Patel, S/o Shri Ramsingh Patel, aged about 60 years, R/o village Karighati, Police Station Sariya (wrongly mentioned 'Baramkela') District Raigarh (CG)

---- Applicant (In Jail)

Versus

- The State of Chhattisgarh, through the District Magistrate, Raigarh, District Raigarh (CG) related police out post- Kanakbira, the Station House Officer under Police Station Sarangarh, District Raigarh.

....Non-applicant

For Applicant	:	Mr. Roop Naik, Advocate
For Non-applicant	:	Mr. Sudhir Sahu, Panel Lawyer

Hon'ble Mr. Justice Parth Prateem Sahu

21.12.2021

1. This is second application on behalf of applicant under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail. First bail application was dismissed on merits vide order dated 20.10.2020 passed in M.Cr.C. No.5841/2020.
2. Learned counsel for applicant submits that this second application for grant of regular bail is filed under changed circumstance as prosecutrix has not supported case of prosecution before the trial Court.
3. Applicant is in custody since 23.7.2020 in connection with Crime No.492/2020 registered at Police Outpost Kanakbira, Police Station Sarangarh, District Raigarh (CG) for commission of offence punishable under Sections 376 of IPC.
4. Case of the prosecution, in brief, is that on 18.7.2020 at about 11:00 a.m. when prosecutrix was alone in her house, applicant came there and committed forcible sexual intercourse with her. Incident was reported to concerned police station based upon which aforementioned crime is registered against applicant and he was arrested on 20.7.2020.
5. Mr. Roop Naik, learned counsel for applicant would submit that absolutely false and baseless allegations are levelled against applicant by prosecutrix in FIR as also in her statement recorded under Section 161 CrPC. On 24.9.2021 prosecutrix was examined before trial Court and since she did

not support case of prosecutrix, she was declared hostile. Copy of deposition sheet of prosecutrix recorded before trial Court concerned is filed as Annexure A-3. Age of prosecutrix on the date of alleged incident was above 40 years. Applicant is in jail since 23.7.2020, conclusion of trial may take some time, hence applicant may be enlarged on regular bail.

6. Per contra, Mr. Sudheer Sahu, learned for the State opposes the submissions made by learned counsel for applicant and submits that serious allegations are levelled by prosecutrix in FIR and her statement recorded under Section 161 CrPC. However, he does not dispute submission of learned counsel for applicant that prosecutrix did not support case of prosecutrix in her Court statement and declared hostile.
7. I have heard learned counsel for the parties.
8. Taking into consideration facts and circumstances of case, nature of allegations; pre-trial detention period of applicant i.e. since 23.7.2020; submission of learned counsel for applicant that prosecutrix has not supported case of prosecution in her Court statement; without commenting anything on merits of case, I am inclined to grant regular bail to applicant.
9. Accordingly, bail application is allowed and it is directed that applicant shall be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to satisfaction of trial Court concerned on the conditions that;
 - a) he shall appear before trial Court concerned regularly on each & every date unless exempted from appearance.
 - b) he shall not, in any manner, tamper with prosecution witnesses.
 - c) If he is found involved in similar offence in future, it will be open for the State to apply for cancellation of bail.

Certified copy as per rules.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-