

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 8321 of 2021

- Mohan Aghariya, S/o Rajman Aghariya, Aged About 29 Years, R/o Rajbahar Bhaiyathan, District- Surajpur, Chhattisgarh.

---- Applicant

Versus

- State of Chhattisgarh, Through- S.H.O. Police Station- Udaypur, District- Sarguja, Chhattisgarh.

---- Non-Applicant

For Applicant : Smt. Indira Tripathi, Advocate

For Non-Applicant/State : Shri Rahim Ubwani, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya

Order on Board

10.12.2021

Heard.

- 1) First bail application of the applicant under Section 439 of Cr.PC. was dismissed as withdrawn by this court vide order dated 14.09.2021 in MCRC No. 5390 of 2021.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 13.06.2021 in connection with Crime No. 81/2021 registered at Police Station- Udaypur, District- Sarguja (C.G.) for the offence punishable under Section 376 (2) (n) of IPC.
- 3) As per written complainant & FIR, the applicant went to the village of the prosecutrix on 04.06.2021, called her to come outside and took her towards Lainga forest at about 06.30 pm, where he made sexual intercourse with the prosecutrix on the pretext of marriage. Thereafter, he took her to his house at Rajbahar and kept her for seven days & repeatedly committed sexual intercourse with her. Later on, she came to know that the

applicant is already married person, having one child, she asked him to marry her but he refused to marry her. Thereafter, she lodged report against the applicant.

- 4) Learned counsel for the applicant submits that the applicant has been falsely implicated in the crime in question. She further submits that prosecutrix is a major lady, prior to the incident they were known to each other and she was a consenting party. It is further submitted that the prosecutrix has stated nothing about the applicant that he made sexual intercourse with her on the pretext of marriage. The applicant has no criminal antecedents, there is no likelihood of his tampering with the prosecution evidence or absconding. The applicant is in jail since 13.06.2021, charge-sheet has already been filed and trial is likely to take some time for disposal. Therefore, the applicant be released on bail by this Court.
- 5) On the other hand, learned counsel for the Non-Applicant/State opposes the bail application.
- 6) Having heard learned counsel for the parties, having regard to the facts and circumstances of the case, age of the prosecutrix, prior to the incident prosecutrix and the applicant were known to each other, in her statement u/s 164 of CrPC she states that on the date of incident i.e. 04.06.2021, the applicant made physical relation with her in the forest and thereafter took her to his house where she stayed 3-4 days, during this period the applicant had physical relation with her, when parents of the applicant told her to drop her at her house, she refused and insisted for marry the applicant, in her statement she is nowhere stated that physical relation was made by the applicant with her on the pretext of marriage, only when the applicant and his parents did not agree the proposal of marriage of the prosecutrix with the applicant, the report was lodged, considering the age of the prosecutrix, the fact charge-sheet has already been filed, the detention period of the applicant, who is 29 years old and the fact that the applicant

has no criminal antecedent, there is no likelihood of the applicant tampering with the prosecution evidence or absconding as admitted by both the counsel and conclusion of trial may take some time, without commenting anything on merits of the case, the application is allowed.

7) It is directed that in the event of the applicant executing a personal bond for a sum of Rs.1,00,000/- with two sureties of Rs. 50,000/- each to the satisfaction of the concerned trial Court, he shall be released on bail, on following conditions :-

(i) he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such fact to the Court,

(ii) he shall not act in any manner which will be prejudicial to fair and expeditious trial, and

(iii) he shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial,

(iv) he shall strictly follow the COVID-19 protocol issued by the Central Government/State Government/Local Authority,

(v) he shall not involve himself in any offence of similar nature in future.

Let a copy of this order be forwarded to the concerned police station forthwith who shall inform the trial Court in the event of applicant involving himself in similar offence in future.

Sd/-
(Gautam Chourdiya)
Judge

Nadim