

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C. No. 8995 of 2020**

1. Ghanshyam S/o Harinath Aged About 19 Years R/o Village Lodhi, Police Chowki- Wadrafnagar P.S. Basantpur, District Balrampur Ramanujganj Chhattisgarh., District : Balrampur, Chhattisgarh
2. Jaiprakash S/o Ramlallu Aged About 22 Years R/o Village Lodhi, Police Chowki- Wadrafnagar P.S. Basantpur, District Balrampur Ramanujganj Chhattisgarh., District : Balrampur, Chhattisgarh

---- Applicants**Versus**

State Of Chhattisgarh Through The Police Station Basantpur, District Balrampur Ramanujganj Chhattisgarh.

---- Respondent

For the Applicant : Shri A.N. Pandey, Advocate.
 For the Respondent/State : Ms. Shivali Dubey, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****05.02.2021**

Heard.

1. At the outset, learned counsel for the applicants seeks permission to withdraw the bail application of applicant No.2 – Jaiprakash.

2. Accordingly, the bail application of applicant No.2 – Jaiprakash is dismissed as withdrawn with liberty to revive the same after examination of the relevant witnesses.

3. This is the first bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to applicant No.1 – Ghanshyam who has been arrested in connection with Crime No.152 of

2020, registered at Police Station – Basantpur, District – Balrampur-Ramanujganj, Chhattisgarh for the offence punishable under Sections 341, 294, 506, 323, 366(A), 354/ 34 and 376 (d) of the Indian Penal Code and Sections 6 and 17 of the Protection of Children from Sexual Offences Act, 2012.

4. Learned counsel for the applicant submits that applicant No.1 – Ghanshyam is in jail since 2.10.2020 and has been falsely implicated in this case. It is further submitted that there is no allegation of rape against this applicant. The prosecutrix has given statement under Section 164 of the Cr.P.C. mentioning that apart from main accused – Jaiprakash none of the other accused persons were present when she was raped. Hence, it is prayed that applicant No.1 be enlarged on bail.

5. On the other hand, learned counsel for the State opposes the bail application and the submissions made in this respect. It is submitted that the age of the prosecutrix in this case was only 14 years 13 days and further, in the statement of the prosecutrix under Section 161 of the Cr.P.C., the friend of main accused – Jaiprakash who had assisted in the commission of offence of rape by Jaiprakash has been identified as this applicant in test identification parade. Hence, no case is made out for grant of bail to applicant No.1 – Ghanshyam.

6. Heard counsel for both the parties and perused the case diary.

7. According to the prosecution case, on the date of incident the minor prosecutrix and her friend both had been returning from jungle, she was accosted by co-accused – Jaiprakash and four others. It is alleged that Jaiprakash started beating her and then by use of force he forcibly disrobed and raped her. In the statement under Section 161 of the Cr.P.C., the prosecutrix has stated that one of the assistants of Jaiprakash has assisted the main accused, however, in the statement under Section 164 of the Cr.P.C. she has stated that the remaining four persons fled from the spot when the accused - Jaiprakash started beating and ravishing the prosecutrix.

8. After considering the submissions and the facts present in this case, I am of this view that it is a fit case where the applicant should be benefited with grant of regular bail during the pendency of trial.

9. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed.

10. 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 the satisfaction of the concerned trial Court, for his appearance as and when directed. In case any default is committed by the applicant/s in appearing before the concerned trial Court, this order granting bail shall stand cancelled automatically.

Sd/-

(Rajendra Chandra Singh Samant)
Judge