

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 947 of 2021**

1. Rajesh Kumar @ Chhote Motu S/o Babulal Dhanuvar Aged About 28 Years R/o Village Saripali, Police Station Korba, District Korba, CG
2. Shrisingh Kanwar@Nanidou S/o Dhansingh Kanwar Aged About 26 Years Police Station Korba, District Korba, CG

---- Applicants

Versus

State of Chhattisgarh, through Police Station Officer, PS Balco Nagar
District Korba, CG

---- Non-applicant

For applicants	Mr. S.V. Purohit, Adv.
For non-applicant/State	Ms. Akshra Amit, PL.

Hon'ble Shri Justice N.K. Chandravanshi**Order on Board****25-10-2021**

1. As per applicants, this is second bail application under Section 439 of the Cr.P.C. preferred by them before this Court and no bail application is pending before any other court. Their first bail application was dismissed as withdrawn by coordinate bench vide order dated 8-10-2020 passed in MCRC No. 4136/2020.
2. The applicants have been arrested in connection with Crime No. 31/2020 registered in police station Balco Nagar, Distt. Korba, (CG) for offence punishable under 376-D of the Indian Penal Code.
3. Brief facts of the case are that on 19-1-2020 at 5.30 pm when victim prosecutrix was returning to her home after attending call of nature, applicants dragged her towards forest and when she tried to shout, they gagged her mouth and committed gang rape with her. Report was lodged by the complainant on the next day and after completion of investigation, charge sheet was filed under Section 376-D of the IPC against the applicants and one other accused, which is pending before the trial Court.
4. Counsel for the applicants submits that the applicants have not committed alleged crime. In the FIR lodged by the victim, she has not stated that applicants have committed rape with her. Even the time of commission of alleged crime is contradictory in the FIR and in the statement recorded by the Court under Section 164 of the Cr.P.C. He next submits that undergarment of the victim/prosecutrix has not been

examined. The applicants are in jail since 21-1-2020. Charge sheet has been filed but completion of trial will take more time. Hence, the applicants may be granted bail.

5. On the other hand, the State Counsel opposes the bail application submitting that the applicants and other co-accused person have committed gang rape with the victim/prosecutrix. She lodged written FIR against applicants naming them. In the FIR and the statement recorded by police under Section 161 of the Cr.P.C. and documents annexed with the charge sheet show that time of incident was about 5.30 pm. Only the fact that she has stated different time in her statement recorded under Section 164 of the Cr.P.C. cannot be a ground for enlarging them on bail. She further submits that the victim/prosecutrix has stated about the crime committed by the applicants to other witnesses also, which they have supported in their statements recorded by the police under Section 161 of the Cr.P.C., DNA test report is also against the applicants, therefore, they do not deserve to be enlarged on bail.
6. I have heard counsel for both the parties and perused the case diary and material available.
7. Considering the facts and circumstances of the case, especial the fact that it is a case of gang rape, considering the nature and gravity of offence, evidence available on record against the applicants regarding their involvement in the crime, I do not feel inclined to allow this bail application preferred by the applicants.
8. Consequently, the bail application is dismissed.

Sd/-
(N.K. Chandravanshi)
Judge