

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 11024 of 2022

Bhurmundu Yadav @ Chandro Yadav, S/o Uttam Yadav, Aged About 37 Years, By Caste Mahkul, R/o Village Nakbar, Police Station Kansabel, District – Jashpur (C.G.)

--- Applicant

Versus

State of Chhattisgarh, Through: Station House Officer, Police Station: Kanabel, District- Jashpur (C.G.)

--- Respondent

For Applicant : Mr. Ajeet Kumar Yadav, Advocate.

For State/ Respondent : Mr. B.P. Banjare, Dy. Govt. Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

Order on Board

28/02/2023

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicant, who has been arrested on 01.11.2022 in connection with Crime No. 154/2022, registered at Police Station- Kansabel, District- Jashpur (C.G.) for the offence punishable under Sections 365, 366, 376 & 506 of I.P.C.
2. Case of the prosecution in brief is that on 31.10.2022, the victim lodged FIR against the applicant alleging that on 19.10.2022 at about 1:00 afternoon, the applicant forcibly caught the victim and took her to Bataikela Tiranga Nala forest by his motorcycle. The victim made an attempt to rescue herself, but she could not succeed and thereafter she was subjected to commit sexual intercourse by the victim.
3. Learned counsel for the applicant would submit that the applicant has been falsely implicated in the crime in question as the victim herself was returning from house of her elder mother-in-law and there was no occasion for the present applicant to get location of the victim. He would further submit that the victim informed the applicant about her location, therefore, she is consenting party for commission of sexual intercourse, which does not fall within ambit of rape. He would further submit that the victim is aged about 35

years, as such, it can very well say that the victim is consenting party. He would further submit that the applicant is in jail since 01.11.2022, the trial is likely to take some time for its final disposal, therefore, the applicant may be enlarged on bail.

4. On the other hand, learned counsel for the State opposes the bail application and submits that there is sufficient material available in the case diary against the applicant regarding commission of offence. He would further submit that from statement of the prosecutrix, it is quite vivid that she was taken forcible by the applicant, she was alone lady and there is no question of alarming, as such, the charge-sheet has rightly been filed against the applicant. Hence, the application for grant of bail may be rejected.
5. I have heard learned counsel for the parties and perused the case diary.
6. Considering statement of the prosecutrix and contents of FIR as also place and time of occurrence, which is near to the market, the allegation made by the victim that the present applicant forcible took the victim where people were roaming, as such, it cannot be presumed that the victim was forcible taken by the applicant, thus prima facie, it reflects that she is consenting party to crime in question and also considering age of the prosecutrix and the fact that the applicant is in jail since 01.11.2022 and conclusion of the trial may take some time, without commenting anything on merits of the case, I am of the opinion that it is a fit case to enlarge the applicant on bail.
7. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed. It is directed that the applicant shall be released on bail on furnishing a personal bond for a sum of Rs. 25,000/- with one surety in the like amount to the satisfaction of the concerned trial court. He shall appear before the trial court on each and every date given by the said trial court, till disposal of the trial.

Certified copy as per rules.

**Sd/-
(Narendra Kumar Vyas)
Judge**