

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 6378 of 2015

Krishna Jaiswal, S/o. Late Premlal Jaiswal, Aged About 32 Years, R/o. Village Nagpur Basti, P.S. Podi, District Korba, Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh, Through Station House Officer- Police Station, Podi, District Korba, Chhattisgarh

---- Respondent

For Applicant : Ms. Hamida Siddiqui, Advocate

For Respondent : Mr. Anant Bajpai, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

07/12/2015

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the applicant who has been arrested in connection with Crime No.76/2015 registered at Police Station- Podi, District Korba (C.G.) for the offence punishable under Section 363, 366 & 376 (Jha, Tha, Dha) of Indian Penal Code and Section 4 & 6 of Protection of Children from Sexual Offences Act, 2012.
2. As per the prosecution case, in brief, on 08.07.2015 the prosecutrix while was returning after answering the call of nature, she was caught hold by the applicant and thereafter she was dragged into the Hotel and was forced to drink and when she lost her conscious, she was subjected to forceful sexual intercourse. Therefore, the offence has been committed.
3. Learned counsel for the applicant submits that the date of birth of the prosecutrix is 15.05.1997 and taking into date of incident, it would come to 18 years. She relied on the certificate issued by the

State by the Registrar, Birth & Death filed alongwith this application. It is further submitted that the applicant is not capable of doing sexual intercourse as per the medical report. She relied on the documents filed alongwith this application and would submit that against the family members of the prosecutrix different criminal cases were registered, such as, 15 criminal cases against her father Sanjay Mishra, 5 criminal cases against her brother Lucky Mishra and 2 cases against her mother Radha Mishra and they are in habit of lodging the false complaint so as to extract the money. Therefore, the applicant may be enlarged on bail.

4. Per contra, learned State counsel opposes the prayer for grant of bail and he would submit that as per the prosecution the date of birth of the prosecutrix is 15.05.1999 and the same is established during the trial. He submits that according to Class-I admission register, the date of birth of the prosecutrix is 15.05.1999 which should be taken to be correct and consequently taking into the statement of the prosecutrix, the applicant may not be enlarged on bail.
5. I have heard learned counsel appearing for the parties and perused the case diary.
6. The certificate issued by the Registrar, Birth & Death, shows that the date of birth of the prosecutrix is 15.05.1997 whereas the prosecution says the date of birth to be 15.05.1999. Therefore, prima facie the certificate issued by the Registrar, Birth & Death also will have significance. Taking into fact that different cases were registered against the family members of the prosecutrix as shown on information under R.T.I.; having regard to the statement of the prosecutrix and the way the offence is said to be committed and the age of the prosecutrix is still to be adjudicated and further

considering the background of criminal antecedent of the family members of the prosecutrix and the facts and circumstances of case, I am inclined to release the applicant on bail.

7. Accordingly, the bail application filed under Section 439 of Cr.P.C. is allowed.
8. 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 sum to the satisfaction of the concerned trial Court, for his appearance as and when directed.
9. Certified copy as per rules.

Sd/-
(Goutam Bhaduri)
Judge