

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.CR.C. No. 5344 of 2015

1. Philomena Kerketta, D/o. Guruwaro, aged about 19 years, Presently residing at Jyoti Mission School, Gram Sarbhoka, Thana – Podhi, District Koriya (C.G.)

----Applicant

Versus

1. State Of Chhattisgarh, Through : Police Station – Podhi, District Koriya (C.G.)

---- Respondent

For Applicant	: Mr. Anand Dadariya, Advocate
For Respondent/State	: Mr. Anant Bajpai, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

23/11/2015

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 in connection with Crime No.105/2015, registered at Police Station – Podhi, District – Koriya (C.G.) for the offence punishable under Section 377 of Indian Penal Code, 1861 read with Section 5(f), (i), (m) and Section 6, 19 (1), 20 and 21 of the Protection of Children from Sexual Offences Act, 2012 (henceforth 'POSCO Act)..
2. Case of the prosecution, in brief, is that a report was lodged on 10.09.2015 by the complainant, Smt. Laxmaniya, the mother of the prosecutrix and on such report, on primary investigation, the offence under Section 377 of Indian Penal Code, 1861 read with Section 5(f), (i), (m) and Section 6, 19 (1), 20 and 21 of the POSCO Act is registered and still the matter is under investigation. It was the case that the minor girl aged about 9 years, student of Class-4th was sexually abused and penetrative sexual assault was committed

causing grievous hurt and bodily injury on the girl. The offence is being investigated.

3. Learned counsel for the applicant would submit that the case against the applicant under the POSCO Act can not be made against this applicant as Section 3 of the POSCO Act, would only take within its ambit penetrative sexual assault for male person and here the applicant is a female. He read out the Section 3 of POSCO Act and submits that in such circumstances, the offence under POSCO Act is not made out. He would further submit that the name of the applicant has not been named in the FIR and even the statement recorded of the mother of the prosecutrix/child, name of the present applicant has not been stated. He would further submit that the prosecutrix at the relevant time had some infection in her private part and on account of that some bleeding occurred, which was informed to the in-charge of the hostel. He would further submit that the District Child Protection Committee do not have any jurisdiction to investigate such type of offence. He would further submit that the statement of the mother of the prosecutrix read with statement of the prosecutrix would not make out the case under the sections against this applicant which is being investigated. He would further submit that the applicant is in jail since 10.09.2015 and taking into the fact that the applicant could not have committed sexual overt act being a lady, therefore, she may be released on bail.
4. On the other hand, learned counsel for the State opposes the bail application. He would submit that the mother of the prosecutrix has made a report and the investigation is going on, therefore, at this stage, it can not be conclusively stated that no offence has been

committed.

5. I have heard learned counsel appearing for the parties and perused the case diary.
6. Perusal of the case diary would show that the offence is still under investigation. It further show that mother of the prosecutrix was informed while the prosecutrix aged about 9 years was in acute pain and trouble and thereafter she came down alongwith her mother and subsequently the report was made. The case diary contains FSL report and FSL report confirms that inner garments of the prosecutrix shows presence of spermatozoa. The medical report affirms that some penetrative sexual assault was tried to be made, whereby the prosecutrix has sustained injuries on her sexual organ. Case diary further shows the involvement of the applicant for penetrative sexual assault on prosecutrix. The MLC affirms injuries on the private part as also on the different part of the body. This applicant was the in-charge of the hostel, wherein the offence is said to be committed, therefore, considering the fact and the evidence available in the case diary at this stage, it can not be conclusively stated that the applicant is innocent as certainly when such incident happened in the hostel, the applicant could not by pass the charges. Taking into the medical report, the statement of the prosecutrix and her mother and further taking into the other evidence available in the case diary with the involvement of this applicant, I am not inclined to allow this application.
7. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is dismissed.

Sd/-
(Goutam Bhaduri)
Judge