

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 7050 of 2015**

- Bhukhan Kashyap, S/o Ramkumar Kashyap, aged about 40 years, r/o Village & Post Misda, P.S. & Tehsil - Nawagarh, Revenue & Civil District Janjgir - Champa Chhattisgarh, Presently R/o Ravishankar Nagar, M.I.G. 2/41, Tehsil - Korba, P.S. City Kotwali Revenue & Civil District - Korba Chhattisgarh

---- Applicant**Versus**

- State of Chhattisgarh, Through - Station House Officer, Police Station - Lemru, Korba, Revenue & Civil District - Korba Chhattisgarh

---- Non-Applicant

For Applicant	:	Mr. Surfaraj Khan, Advocate.
For Non-Applicant/State	:	Mr. Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice I.S. Uboweja**Order on Board****10/12/2015**

1. This is second bail application filed under Section 439 of the Code of Criminal Procedure, 1973 (for short, 'the Code') for grant of regular bail to the applicant, who has been arrested in connection with Crime No.02/2015 {Sessions Trial No. 15/2015 pending in the Court of Special Judge (S.C./S.T.) Korba} registered at Police Station Lemru, District – Korba (C.G.), for the offence punishable under Sections 363, 366A, 370, 370A, 373, 376/34 of the Indian Penal Code, Sections 4 & 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. First bail application has been dismissed as withdrawn vide order dated 31.08.2015.
2. Case of the prosecution, in brief, is that the present applicant has committed sexual intercourse with the prosecutrix, who is less than 18 years of age and thereby committed the aforesaid offences.

3. Learned counsel for the applicant submits that the applicant has not committed any offence as leveled by the prosecution agency and has been falsely implicated in the crime in question. Prosecutrix (PW-1) and Victim (PW-2) were examined before the trial Court, wherein the prosecutrix has not stated anything against the present applicant. Prosecutrix (PW-1) in her Court statement in paragraphs No. 4, 15 & 16 (with the heading note) neither identified the present applicant nor named that the present applicant has committed any sexual intercourse or rape against her. Similarly, in the Court statement of Victim (PW-2) in paragraphs No. 2, 15 & 50 also she has categorically testified that the present applicant has not committed any offence. Learned counsel further submits that charge sheet has been filed, the applicant is in jail since 08.06.2015 and no further custodial interrogation is required by the prosecution, therefore, the applicant be released on bail.
4. On the other hand, learned counsel for the State opposing the bail application submitted that the prosecutrix is a minor girl at the time of incident and in para 17 of her statement she has identified the present applicant at the time of test identification parade held at police station, Urga near the school which is sufficient to prove the involvement of the applicant in the crime in question. He further submits that Investigating Officer and material witnesses have not yet been examined, therefore, the applicant should not be released on bail.
5. I have heard learned counsel for the parties and perused the case diary.
6. Taking into consideration the facts and circumstances of the case and the allegation leveled against the applicant which is serious in nature; after appreciating the evidence available in the case diary, it is clear that the prosecutrix is a minor girl at the time of incident and also considering the statement of the prosecutrix (PW-1), it is clear that the present applicant is

involved in the crime in question and further taking note of fact that the Investigating Officer and material witnesses have not yet been examined, I am of the considered opinion that *prima facie* at this stage, it is not a fit case where the applicant can be enlarged on bail.

7. Accordingly, the application for grant of regular bail is liable to be and is hereby rejected.

Certified copy as per rules.

Sd/-
(I.S. UBOWEJA)
JUDGE