

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C. No.5341 of 2015**

Joseph Dhannaswamy, S/o. Thambuswami, aged about 50 years, Occupation – Principal, Biyanni Higher Secondary School, Sarbhoka, R/o. Gram Sarbhoka Paris, Thana Podhi, District - Koriya (Chhattisgarh)

---- Applicant

Versus

State of Chhattisgarh, through Police Station - Podhi, District Koriya (Chhattisgarh)

--- Non-applicant

For Applicant : Mr. Basant Denial & Shri Anand
Dadariya, Advocate.

For Non-applicant : Mr. Anant Bajpai, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

CAV ORDER

26/10/2015

Heard.

1. The accused/applicant has moved this bail application under Section 439 of the Code of Criminal Procedure for releasing him on regular bail during trial in connection with Crime No. 105/2015 registered at Police Station Podhi, District Koriya for the offences punishable under Sections 376(2)(f) & 377 of Indian Penal Code, 1861 read with Section 5(f),(i),(m) and Section 6,19(1), 20 & 21 of the Protection of Children from Sexual Offence Act, 2012 (henceforth 'POSCO Act').

2. Case of the prosecution, in brief, is that on 07.09.2015 applicant is said to have committed rape with the minor prosecutrix/committed carnal intercourse against the order of nature with the said minor girl and also failed to report about the incident to the police station and thereby committed the aforesaid offences.
3. Shri Basant Denial, learned counsel appearing for the applicant would submit that applicant is the Principal of prestigious school *i.e.* Biyanni Higher Secondary School, Sarbhoka and he has been falsely implicated in the offence in question as he has not committed any offence, which is apparent from the fact that applicant is not named in the FIR, statement of the mother of prosecutrix has been recorded under Section 161 of the Cr.P.C. in which, she has not stated the name of the applicant that he has committed rape/carnal intercourse with the minor prosecutrix. He would further submit that the prosecutrix at the relevant time was suffering from urinary tract infection/premature puberty, on account of which there was some bleeding in her private part, in fact nobody has informed the present applicant about the said incident with the minor prosecutrix. He also submits that District Child Protection Committee constituted under the provisions of Section 62(2) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (henceforth 'Act, 2000'), has no jurisdiction to make investigation of alleged offence of rape

with the minor prosecutrix, in-fact Child Welfare Committee is only a Committee, which is entitled to make investigation by virtue of Section 29(5) of the Act, 2000. He further submits that applicant is in jail since 10.09.2015 and prosecutrix's mother has taken her from the School Hostel without leave of school authorities on 10.09.2015 at 10:00 a.m. and did not inform the applicant about such incident and she made report with a delay of 8 hours on the same day *i.e.* on 10.09.2015 at 04:30 p.m. without any explanation for delay and the prosecutrix was not medically examined immediately after leaving the School Hostel, which makes the prosecution case not only suspicious, but creates doubt as to whether rape has been committed with the prosecutrix and, therefore, the applicant may be released on bail as he is ready & willing to abide by the conditions, if any, imposed while granting bail to the applicant.

4. On the other hand, Mr. Anant Bajpai, learned counsel for the State vehemently opposed the bail application and submitted that it is not only a case of forcible rape by the applicant but also a case of carnal intercourse having been committed by the present applicant by which minor girl suffered severe bleeding in her private part, which is apparent from the FIR, and the minor girl/prosecutrix has clearly identified the present applicant in the Test Identification Parade conducted that he has committed such offence with her. He further submits that

the rape has been committed with the prosecutrix, which is fortified from the report of Chemical Analyst that semen was found in her undergarment and, as such, the delay has already been explained as the girl was remained in condition of shock after having suffered forcible sexual intercourse and also suffering from severe trauma after having become conscious, which cannot be attributed as delay in lodging the First Information Report and, therefore, the applicant is not entitled to be released on bail. He relied upon the judgment of Supreme Court in case of **Ramesh v. State**¹.

5. I have heard counsel for the parties and perused the case diary with utmost circumspection.
6. A perusal of the case diary would show that on the date of occurrence, applicant was holding the post of Principal of the School in which the victim girl (9 years) was studying in IVth Standard and was staying in the hostel managed by the school and its society. The incident was said to have occurred on 07.09.2015 and victim child was medically examined on 10.09.2015 by Medical Officer, District Hospital, Baikunthpur in which multiple external injury on her private parts as well as on wrist joint was found and the medical officer clearly opined to be a case suggestive of sexual intercourse without her consent. In the course of investigation victim's undergarment was seized and it was sent to Forensic Laboratory for Chemical Examination. The said laboratory

1 (2014) 9 SCC 392

after examination found semen and human spermatozoa in her undergarment. In the test identification parade conducted on 11.10.2015, the victim girl has identified by the applicant. Not only the statement of Dr. Minj who initially treated the victim girl, statement of victim girl recorded under Section 164 of the Code of Criminal Procedure and statement of Smt. Laxmania Sahu would show the involvement of the applicant in offence in question and further taking note of the fact that applicant was obliged to inform the said fact statutorily to the police, which he failed to do, thus considering the totality of the facts and circumstances of the case, in the considered opinion of this Court, the applicant is not entitled for regular bail. The bail application deserves to be and is accordingly rejected.

Sd/-

(Sanjay K. Agrawal)
Judge