

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 3098 of 2016

- Sawan Sethiya S/O Deviram Sethiya Aged About 22 Years R/O Village Bolbola, P.S. Kondagaon, District Kondagaon, Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Makadi, District Kondagaon, Chhattisgarh.

---- Respondent

For Applicant : Mr. Uttam Pandey Advocate

For Respondent/State : Mr. Satish Gupta, Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

04.07.2016

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 on 29-01-2016 in connection with Crime No. 6 of 2016, registered at Police Station Makadi, District Kondagaon (CG) for the offence punishable under Sections 363, 366, 376(2)(N) of the IPC, Section 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.
2. As per prosecution case, on 26-01-2016 the applicant abducted the prosecutrix who was a minor girl from the lawful guardianship of her parents and thereafter he committed forcible sexual intercourse with her and thereby he committed the aforesaid offence.
3. Learned counsel appearing for the applicant would submit that as per document (Annexure A/2), the date of birth of the prosecutrix

was 8-7-1997, therefore, on the date of incident she was a major girl and considering her statement, no offence has been committed as she was a consenting party to the entire incident. He would further submit that the charge-sheet has been filed and the applicant is in jail since 29-01-2016, therefore, he may be enlarged on bail.

4. Per contra, learned State counsel opposes the prayer for grant of bail. On the earlier occasion, State counsel was directed to verify the document (Annexure A/2) and on verification he came out with original marks-sheet (Annexure A/2) of the prosecutrix wherein the date of birth of the prosecutrix is written "8-7-1998".
5. I have heard learned counsel for the parties and have also perused the case diary and also the document (Annexure A/2) filed before this court and the document which has been procured on instructions by Police, wherein *prima facie*, it appears that there is some manipulation to show that the prosecutrix was a major.
6. Taking into consideration the facts and circumstances, further considering the statement of the prosecutrix and the fact that certain documents have been placed on record by the applicant to project⁷ that the prosecutrix was a major girl on the date of incident, *prima facie* it appears to be a wrong, I am not inclined to release the applicant on bail.
7. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is liable to be and is hereby dismissed.

Sd/-
(Goutam Bhaduri)
Judge

Raju

