

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 7694 of 2015

Philomena Kerketta, D/o. Guruwaro, Aged About 19 Years, Presently R/o. Jyoti Mission School, Gram Sarbhoka, Thana Podhi, District Koriya, Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh, Through Station House Officer, Police Station Podhi, District Koriya, Chhattisgarh

---- Respondent

For Applicant : Mr. Kishore Narayan, Advocate

For Respondent : Mr. Anant Bajpai, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

ORDER

21.01.2016

1. This is the second 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.105/2015, registered at Police Station– Podhi, District Koriya (C.G.) for the offence punishable under Section 323, 376(2)(c)(d)(f)(i)(k), 377 of Indian Penal Code and Section 5(f)(i)(m), 6, 17, 18, 19(1)/21 of the Protection of Children from Sexual Offences Act.
2. The first bail application was dismissed on merit on 23.11.2015 in M.Cr.C. No.5344 of 2015.
3. 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.

4. Learned counsel for the applicant submits that the charge sheet has already been filed and there is no further evidence is required and the applicant has only been inculpated only on her own statement recorded by the police that she inserted her two finger in the vagina of the prosecutrix, therefore, the case under Section 377 of IPC is maximum would be made out. It is submitted that as per the prosecution the person who resembles like a Principal of the School namely Father Josheph Dhannaswamy had sexually assaulted the prosecutrix and therefore the entire allegation of Section 376 of IPC has been made against the co-accused Josheph Dhannaswamy, thereby the allegation against this applicant under Section 377 has been diluted and no statement has been made by the prosecutrix under Section 161 and 164 before the CWC against this applicant. It is submitted that therefore, no case is made out against the present applicant and, as such, she may be enlarged on bail.
5. Per contra, learned State counsel opposes the prayer for grant of bail and submits that the applicant was In-charge of the Hostel wherein the alleged sexual assault has been committed and therefore the applicant has helped for the commission of offence; consequently she may not be enlarged on bail.
6. I have heard learned counsel appearing for the parties and perused the case diary.
7. Perused the charge sheet and the documents. This is the second bail petition. Perusal of the map would indicate that the incident of sexual assault has happened in the Room of Hostel wherein different girls were used to stay. The map shows that the Hostel is

guarded by different gates and according to the evidence of witnesses, the Hostel gates were locked in night, therefore it would lead to show there may not be any possibilities of entering any person into the premises after certain point of time. The victim who is 9 years of age have alleged that she felt that she was subjected to sexual assault. The victim is of 9 years therefore the narration has to be understood. She could not explain or understand the sexual assault. When the mother reported the matter, it was investigated and the difficulties and pain of the victim came to fore. The mother when came and took out the victim and get her examined initially, as per the statement of the Doctor Smt. S. Minj, it was stated that she was subjected to sexual assault. In the FSL report, the undergarments of the victim contained the spermatozoa. Prima facie, it appears that the evidence is on record that the applicant was In-charge of the Girls Hostel and after the assault when the seizure was made of the garments and the garments supported the presence of spermatozoa. Consequently, prima facie involvement of the applicant when the premises used to be locked therefore how any presence of male member inside Hostel came into being cannot be ignored. The earlier bail application was dismissed on merits and there is no change of circumstances appears, therefore, I am not inclined to release the applicant on bail.

8. Accordingly, the second bail application filed under Section 439 of the Cr.P.C. is dismissed.

Sd/-
(Goutam Bhaduri)
Judge