

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No.12 of 2017

- Mohd. Shahid S/o Shri Raful Azam Aged About 27 Years Permanent R/o Quarter No. 10- B, Street No. 23, Sector- 2, Bhilai, Tahsil & District- Durg, Chhattisgarh.

---- Petitioner

Versus

- State Of Chhattisgarh Through Office-In-Charge, Police Station Supela, Bhilai, Tahsil & District Durg, Chhattisgarh.

---- Respondent

For Petitioner	:	Shri Rahul Tamaskar, Advocate
For Respondent/State	:	Shri Manish Nigam, PL

S.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

12/01/2017

Heard.

2. The applicant has preferred this application under Section 438 of Cr.P.C., apprehending his arrest in connection with Crime No.1162/2016, registered at Police Station–Supela, Bhilai, Tahsil & District Durg for alleged commission of offence under Sections 201, 376 & 506 of IPC and Section 4, 5 & 17 of the Protection of Children from Sexual Offences Act, 2012.

3. Case of the prosecution is that the co-accused-Aasif committed rape on a young girl aged 4 years. The allegation is that when the dispute arose between the two families, one of the accused-Aasif, aged 14 years and the prosecutrix, aged 4 years, the applicant entered into the scene to seek mediation between the parties and then it is alleged that the applicant threatened the mother of the prosecutrix that if she lodges any report against Aasif, then action would be taken against the prosecutrix also.

4. Learned counsel for the applicant submits that even according to the FIR and written report lodged by mother of the prosecutrix, the applicant had no role to play in the alleged commission of offence. Even according to the complainant, the applicant seems to be relative of co-accused Aasif, who had approached the

mother of the prosecutrix to bring the dispute to an end and threatened that if any report is lodged against Aasif, action would be taken against the prosecutrix and her family also. He submits that looking to the facts and circumstances of the case, at the most, only allegation on the report could be made out against the applicant is of threatening the parents not to take any action against Aasif, no case for commission of offence under Section 376 of IPC and Section 4 & 5 of the Protection of Children from Sexual Offences Act, 2012 is made out against the applicant.

5. On the other hand, learned State counsel opposes the prayer for grant of bail and submits that at this stage, only FIR has been lodged and the manner, in which, the applicant threatening the other party, if he is granted bail, he may tamper with the prosecution witnesses or threatening them or otherwise not to co-operate with the investigation.

6. I have considered the submission of learned counsel for the parties and perused the case diary.

7. The written report, on the basis of which, FIR has been lodged, prima facie shows that the allegation against the accused-Aasif, aged 14 years is that he took the prosecutrix in the terrace and touched the private part of the prosecutrix and thereafter, dispute arose between two families and the family of the prosecutrix expected that the father of Aasif to take punitive action against the accused but on the next day, the applicant, who happens to be the relative of the accused's father came into picture to advise the parents of the prosecutrix to close the matter. In the written report, it is stated that when mother of the prosecutrix stated regarding lodging of report in the Police Station, then she was threatened by the relatives of Aasif that if report is lodged in the police station, action would be taken against the prosecutrix also.

8. Taking into consideration the totality of the circumstances and the role alleged to be played by the applicant and also the written report, I am inclined to protect the applicant.

9. Accordingly, the application is allowed. It is directed that in the event of arrest of the applicant in connection with the aforesaid offence, he shall be released on bail on furnishing a personal bond for a sum of Rs.10,000/ with one local surety in the like sum to the satisfaction of the arresting officer, on the following conditions that:

(I) The applicant shall in no manner make any attempt to contact the parents of the prosecutrix nor shall involve himself in any act to adversely affect the fair conduct of trial;

(II) The applicant shall make himself available for interrogation by the police as and when required;

(II) The applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer, *and*

(III) The applicant shall cooperate with the investigation as and when he is called.

Sd/-
(Manindra Mohan Shrivastava)
Judge