

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 1964 of 2017**

- Lalit Sahu S/o Falen Sahu, Aged About 25 Years R/o Village Tilai, Tehsil And Police Station Berla, District Bemetara Chhattisgarh

---- Applicant**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station Berla, District Bemetara Chhattisgarh

---- Respondent

For Applicant	: Shri P.P. Sahu, Advocate
For Respondent/State	: Shri Sumit Jhanwar, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****11.4.2017**

1. Heard the matter finally.
2. This is an application filed under Section 439 of the Cr.P.C. for grant of regular bail to the applicant, who has been arrested in connection with crime No. 60/2017, registered at Police Station Berla, Distt. Bemetara (CG) for the offence punishable under Section 354(D) of the IPC and Section 12 of the Protection of Children from Sexual Offences Act, 2012 (for short the POCSO Act).
3. Learned counsel for the applicant submits that the applicant is in detention since 7.3.2017 for more than a month. The matter

is pending before the Special Judge under the POCSO Act empowered under Section 28 of the Act and charge sheet has been filed. The matter is registered as ST No. 13/2017. He further submits that there is no earlier criminal antecedent against the applicant. The prosecutrix was aged about 16 years and 3 months at the time of incident. She, in her statement under Section 164 Cr.P.C. has not supported the factum of FIR regarding the incident committed on 6.3.2017. The applicant is aged about 25 years and he will not commit such offence in future, therefore, the applicant may be released on bail.

4. On the other hand, learned counsel for the State opposes the bail application. He submits that the prosecutrix who is a child under the provisions of Section 2 (1) (d) of the POCSO Act, the applicant followed her and contacted for making the bad act. When the prosecutrix narrated the same to her brother, the applicant also made scuffle with the brother of the prosecutrix. With this, looking to the act of the applicant, the application may be dismissed.

5. I have heard the counsel appearing for the parties. Also perused the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C.

6. On due consideration of the fact that the applicant is the first offender with no criminal antecedents and he is in jail for more than a month and he will not commit such offence in future, I am

inclined to grant an opportunity to the applicant so that he may defend himself without committing any further offence in future.

7. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed.

8. It is directed that the applicant shall be released on bail on furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the Special Judge under the POCSO Act, Bemetara for his appearance before the said trial Court as and when directed.

9. It is made clear that this order granting bail to the applicant shall stand cancelled automatically without reference to the Bench by the Court below if (i) the trial Court finds that the applicant suppressed filing or pendency of any other application for grant of bail before this Court or the Hon'ble Apex Court intentionally; (ii) the applicant does not cooperate in the trial; (iii) the applicant is found to be involved in any offence of the like nature; and (iv) the trial Court finds that the applicant remains absent without any sufficient and cogent reason. If bail is cancelled automatically in view of the above , the Court below may proceed further under the provisions of law, under intimation.

10. On perusal of the order passed by the Additional Sessions Judge (FTC), Bemetara, District Bemetara(CG) dated 9.3.2017, it appears that the presiding office had passed the order under the seal of Additional Sessions Judge(FTC), Bemetara, omitted to mention the authority of law i.e. his authorization under the

POCSO Act as in Section 28 of the said Act, goes to show that the court below is not mentioning the correct nomenclature/authority to dispose of the case/matter. The court below is directed to mention its complete designation as a presiding officer of Special Court designated under the POCSO Act in addition to the other official position of the said presiding officer relevant to mention in the matter. Also it appears that the certified copy of the order dated 9.3.2017 is indicating that the said is the copy of the order sheet dated 9.3.2017 in connection with crime No.60/2017. The presiding officer omitted not to mention the bail petition No. which is essential to identify the order in case the charge sheet has not been filed and even at all if the court below finds it necessary to mention the crime No. even then the court was duty bound to register the same as a bail petition if no other matter is already pending before the said court. The court below is directed not to commit such procedural mistakes in future.

11. Certified copy as per rules.

**Sd/
(Chandra Bhushan Bajpai)
JUDGE**