

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Criminal Case No.2085 of 2017**

- Rajesh Markam S/o Uddika Markam, Aged About 20 Years R/o Atal Awas Sakari District- Bilaspur At Present R/o Billiband, Police Station Kota, District- Bilaspur, Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer Police Station Sarkanda , District- Bilaspur,, Chhattisgarh.

---- Respondent

 For Applicant : Shri Rajeev Kumar Dubey, Advocate
 For Respondent/State : Shri Neeraj Jain, Govt. Advocate

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order On Board

08.9.2017

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.175/2016 registered in Police Station Sarkanda, Distt. Bilaspur (CG) for the offence punishable under Sections 363, 342, 376, 366A, 506, 323, 34 of the Indian Penal Code and under Sections 3 & 4 of Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act').

3. Learned counsel for the applicant submits that the applicant has been arrested on 03.3.2017, after investigation charge sheet has been filed which is pending before Additional Special Judge (FTC)/Special Judge under the POCSO Act, Bilaspur as Special Criminal Case POCSO No.304/2016. Learned counsel for the applicant would submit that POCSO Act is not applicable in the

present matter, the prosecutrix was major at the time of incident, there is no document seized or recovered during investigation regarding the age of the prosecutrix except the affidavit of the mother of the prosecutrix showing the prosecutrix as aged about 14-15 years, but during the trial mother of the prosecutrix stated on oath that prosecutrix is aged about 21-22 years. The prosecutrix was the consenting party, she on her own wish went along with the applicant, hence the applicant may be enlarged on bail.

4. Per contra, learned counsel for the State opposed the arguments advanced on behalf of the applicant on the basis of the entire facts surfaced in the charge sheet.

5. Perused the entire material.

6. On due consideration of the material collected during investigation by the prosecution it appears that on 29.02.2016 the applicant forcibly taken the prosecutrix in a motor cycle, taken her in a building, threatened her by showing knife and thereafter committed rape with her against her will and consent and other acts in furtherance. Considering the entire material collected against the applicant by the prosecution, I am not inclined to grant bail to the applicant.

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

Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE