

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Criminal Case No.2297 of 2017**

- Ajay Kumar Dahariya S/o Bakso Ram Dahariya, Aged About 24 Years R/o Village Kusmi, Thana Palari, District Baloda Bazar Bhatapara Chhattisgarh At Present R/o Kanha Chowk, Behind Rathi Video, Thana Pandri, District Raipur Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through The Police Station House Officer, Thana Pandri, District Raipur Chhattisgarh

---- Respondent

For Applicant	: Shri Deepak Jain, Advocate
For Respondent/State	: Shri Neeraj Mehta, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****01.8.2017**

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.143/2016 registered in Police Station Pandri Distt. Raipur (CG) for the offence punishable under Section 376(2)(i) of Indian Penal Code and Section 5(m)/ 6 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 has been arrested on 08.6.2017, after investigation charge sheet has been filed which is presently pending before Seventh Additional Session Judge (FTC)/Special Judge under the POCSO

Act as Special Criminal Case POCSO No. 145/2016. Learned counsel for the applicant submits that there is a delay of three days in lodging the FIR, the applicant is the neighbour of the prosecutrix, aged about three years, he has been falsely implicated in the offence, at the time of the alleged incident, he was at the hospital where his wife was admitted. A perusal of the statement of the prosecutrix under Section 161 & 164 of the Cr.P.C. before the IO and the Magistrate, it appears that the entire statement cannot be given by a girl aged about three years, no injury was noticed on the private parts of the prosecutrix, there is no compliance of Section 53A of CrPC where it is mandatory to examine the accused for the DNA test. Hence, the instant bail application may be allowed.

4. Per contra, learned counsel for the State opposes the arguments advanced on behalf of the applicant and would submit that there is no reason to disbelieve the statement of the prosecutrix recorded under Sections 161 & 164 of the CrPC.

5. Perused the entire material.

6. It is nowhere mentioned in Section 53A of the CrPC that in a case of rape DNA examination is mandatory. A perusal of the entire material, there is no reason to prima facie disbelieve the statement of the prosecutrix, aged about three years, recorded under Sections 161 & 164 of the CrPC. Looking to the entire case, I am not inclined to grant bail to 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

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