

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 434 of 2017**

- Umesh Sharma S/o Ramavtar Sharma Aged About 49 Years R/o Baradwar , Police Station- Baradwar, District- Janjgir- Champa, Chhattisgarh. **--- Petitioner**

Versus

1. State of Chhattisgarh through The Station House Officer, Police Station- Rampur, District- Korba, Chhattisgarh.
2. Ku. Megha Das D/o Rakesh Das Aged About 16 Years Through Smt. Rachna Rajwade W/o Ashok Rajwade, Aged About 31 Years, R/o Podibahar, Sahu Chall, Rampur, Police Station- Kotwali, Korba, District- Korba, Chhattisgarh. **--- Respondents**

For the applicant	: Mr. Samsun Samual Masih, Advocate
For the State/ R-1	: Mr. Anupam Dubey, Dy.Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****26.10.2017**

1. The petition is for quashing charge sheet which is pending trial before the Addl. Sessions Judge FTC Korba and bearing a Special Case No.24 of 2016. The charge sheet has been filed under sections 363, 368, 376(d), 370(A), 372, 373, 201 read with section 34 of IPC as also section 4 of the Protection of Children from Sexual Offences Act, 2012 and section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2005.
2. The petitioner is one of the accused who is facing the trial in the Sessions Court. It is contended on behalf of the petitioner that no evidence is existing against the petitioner. The prosecutrix has been examined before the Court below and even she has not recognized the petitioner/accused. It is

further contended by the counsel that the medical report would show that the petitioner is incapable of performing sexual act thereby the offence as alleged u/s 376 IPC is completely diluted. It is further contended that the petitioner having not been identified by the victim who has been examined before the Court, the trial which is going against him would show that it is without evidence which necessarily requires the quashment.

3. Learned State Counsel opposes the same and would submit that as per the statement it would show that the petitioner was identified initially and the call details would show that the petitioner was too involved along-with other accused in commission of crime.
4. Perused the reply on behalf of the State. The reply is as vague as it could be. Virtually nothing has been stated in their reply. Perusal of the document which is filed along-with the petition reveals that two mobiles were seized from the prosecutrix which were without SIMS and IME numbers were taken out. The statement of the prosecutrix which is recorded before the Court has not inculpated the present accused. However, the bulk of documents of the charge sheet which is filed would show that the statement of victim who is a minor was recorded even before the Family Consultation Center, Korba, wherein the statement was made that she was subjected to sexual assault and certain mobile number was saved. In the statement recorded u/s 161 Cr.P.C., on 29.07.2016, the Mobile bearing SIM no. 8982171620 and another Mobile SIM No. 9300469502 were disclosed by the victim which were seized from the petitioner

on 11.08.2016. The record would further show that the present petitioner was identified by the victim in identification parade in presence of the Executive Magistrate, Korba. The reports of call details have been filed wherein *prima facie* the internal conversation appears to have been taken place. This fact cannot be ignored that the victim was minor when she was subjected to sexual abuses at different points of time. Though the prosecutrix has not supported the case of prosecution but at this stage giving a finding on the basis of that by only picking-up few lines of the statements of prosecutrix who is a minor, will amount to deciding the case on merits. Taking into fact that enormous other evidence exists in the case which inculpates the petitioner, the facts of this case would lead that the investigation agencies and its armory would also be an important evidence as the petitioner was also identified during the course of investigation by the victim. Considering the same, I do not find that any case is made out so as to quash the proceedings and the trial against the petitioner. Accordingly, this petition is dismissed.

**Sd/-
GOUTAM BHADURI
JUDGE**