

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 2155 of 2017**

- Bhuneshwar @ Ganeshwar Dhimer S/o Biruj Dhimer, Aged About 21 Years (Wrongly Mention In The Impugned Order Bhuneshwar Dhimer) R/o Village Suma, Thana Bhatapara (Gramin), District Baloda Bazar Bhatapara Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through The Police Station House Officer Thana Bhatapara (Gramin) District Baloda Bazar Bhatapara Chhattisgarh

---- Respondent

For Applicant	: Shri Deepak Jain, Advocate
For Respondent/State	: Shri Anant Bajpai, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****18.4.2017**

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. 16/2016 registered at Police Station Bhatapara (Gramin), Distt. Baloda Bazar-Bhatapara (CG) for the offence punishable under Sections 363, 366(A), 376 IPC and Section 4, 6 of Protection of Children from Sexual Offences Act, 2012.
3. Learned counsel for the applicant submits that the applicant is in detention since 24.1.2017. After investigation, charge sheet

has been filed which is pending before the Additional Sessions Judge, Bhatapara, District Baloda Bazar as Special ST No. H06/2017. Learned counsel submits that in the statement of the prosecutrix recorded under Section 164 Cr.P.C., the prosecutrix stated that she and the applicant had undergone marriage and they were residing together and as per Dakhil Kharij Register entry, date of birth of the prosecutrix is shown as 10.5.2000 but in the entries in Aadhar Card her date of birth is mentioned as 1.1.1997 goes to show that the prosecutrix was major at the time of incident, hence, the applicant may be granted bail during trial.

4. On the other hand, learned counsel for the State opposes the bail application. He submits that the entries of the Dakhil Kharij Register may be more appropriate and correct and the prosecutrix in her 161 Cr.P.C. statement supported the entire story against the applicant and as the prosecutrix was minor at the time of incident, she was illegally procured by the applicant and thereafter taken without lawful consent of the parents of the prosecutrix and committed intercourse and as per law any consent for the sake of arguments cannot be termed as a consent given in the authority of law.

5. I have heard the counsel appearing for the parties and perused the material.

6. Prima facie the entries of the Dakhil Kharij register may given priority for the moment over the entries of Aadhar Card if any and also as the prosecutrix was minor on the date of incident

any consent given may not be treated as lawful consent even for the sake of argument and also she had levelled allegations and supported the prosecution story in her 161 Cr.P.C. statement.

7. On due consideration, I am not inclined to grant bail to the present applicant. Consequently, the bail application filed under Section 439 of the Cr.P.C. is dismissed.

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