

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C. No. 2267 of 2017**

Chetan Patel S/o Saunu Lal Patel, Aged About 21 Years R/o Bhandarpur, Police Station Malanjkhanda District Balaghat, Madhya Pradesh.

---- Applicant**Versus**

State Of Chhattisgarh Through Aarakshi Kendra Amleshwar District-Durg, Chhattisgarh.

---- Respondent

For the Applicant : Shri Arvind Dubey, Advocate.

For the Respondent/State : Shri Wasim Miyan, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****22.11.2017**

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicant who has been arrested in connection with Crime No.122 of 2014, registered at Police Station – Aarkshi Kendra Amleshwar, District – Durg, Chhattisgarh for the offence punishable under Sections 363, 366 & 376 of the Indian Penal code and Sections 5 & 6 of the Protection of Children from Sexual Offences Act, 2012.

2. Learned counsel for the applicant submits that the applicant is in jail since 27.11.2014 and he has been falsely implicated in this case. On the basis of the Kotwar Register, the date of birth of the prosecutrix is 5.5.1998. The copy of the same is part of the charge-sheet, on the basis of which, the prosecutrix was above 16 years of age. The prosecutrix and the applicant

had a love affair and the prosecutrix had been a consenting party in this case. It is also submitted that charge-sheet has been filed in the year 2014, however, the trial of the case has not made any progress in any manner, even the prosecutrix has not been examined by the trial Court and the applicant is languishing in jail. Hence, it is prayed that the applicant be enlarged on bail.

3. On the other hand, learned counsel for the State opposes the bail application and the submissions made in this respect. It is submitted that the age of the prosecutrix on the date of incident was below 18 years and subsequent to the Amendment of 2013 the consent of the prosecutrix in such case cannot be regarded as material. Hence, for this reason, the applicant is not entitled for grant of bail.

4. Heard counsel for both the parties and perused the case diary.

5. The facts of the case are that the prosecutrix and the applicant both had a love affair. On 10.11.2014, a missing report was lodged by the mother of the prosecutrix and thereafter, the prosecutrix was recovered on 26.11.2014 and on the basis of the statement made by the prosecutrix FIR was lodged.

6. Considering the submissions made and the contents of the case diary and looking to the fact that the trial of the applicant is not yet concluded after passing of almost three years and the applicant is continuously languishing in jail, I am of the view that the applicant should be benefited with grant of

bail.

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 concerned trial Court, for his appearance as and when directed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge