

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 3200 of 2017**

1. Sunil Kanwar S/o Surendra Kanwar, Aged About 20 Years By Caste Kanwar, by caste Kanwar
2. Niteshwar S/o Sukhdev Aged About 19 Years By Caste Kanwar, Both R/o Village Aacholi, Thana Dongargarh, District- Rajnandgaon,

---- Applicants**Versus**

The State Of Chhattisgarh Through Police Station Bortalav District
Rajnandgaon Chhattisgarh

---- Respondent

For applicant	Mr. Parag Kotecha, Adv.
For Respondent/State	Mr. Vinod Tekam, PL.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****19-9-2017**

1. Perused the office note dated 11-9-2017. As per said note, no other co-accused has preferred petition for grant of bail and earlier absconded co-accused Avinash had filed MCRCA No. 267/2017 which was dismissed on merit by the coordinate bench vide order dated 5-5-2017.
2. Heard finally.
3. The applicants have preferred this application for grant of bail as they are arrested in connection with Crime No. 2/2017 registered in PS Bortalav, Distt. Rajnandgaon (CG) for offence punishable under Section 341, 506, 34 of the Indian Penal Code, 1860 and Section 8 of the Prevention of Children from Sexual Offences Act, 2012 (in brevity 'Act of 2012').
4. Learned counsel for the applicants submit that applicant No. 1 is arrested on 20-2-2017 and applicant No. 2 is arrested on 16-3-2017. Both are aged about 20 and 19 years. After investigation charge sheet has been filed against both the applicants and one absconded

accused Avinash under Section 299 of the Cr.P.C. and the same is pending before the Additional Sessions Judge, Dongargarh, CG to the Court of 1st Additional Sessions Judge, Rajnandgaon (CG)/ Special Judge under the Act of 2012 but learned counsel is not aware of the special criminal case number. Learned counsel submits that co-accused/ juvenile Sonu @ Jitendra and Tarun Sahu have been charge sheeted before the Juvenile Justice Board, Rajnandgaon. The Principal Magistrate, Juvenile Justice Board, Rajnandgaon while hearing bail petition in Criminal Case No. 55/2017 granted bail to both the co-accused/juvenile on 12-4-2017. With this they are on bail. Another co-accused Avinash Verma is absconding. Learned counsel submits that as per entire written complaint, FIR, statement under Section 161 and 164 of the Cr.P.C. of the prosecutrix and statement of other witnesses present on the spot, the role of the present applicants is limited to the extent that he was present nearby the place of incident. He along with co-accused Tarun Sahu, Sonu @ Jitendra, the prosecutrix and other girls went to Paniajob dam for picnic and when they were returning from the said dam, absconded co-accused Avimash Varma came and he threatened and caused to prosecutrix. Co-accused Avinash along with co-accused Tarun Sahu took the prosecutrix at a distance and there he outraged the modesty of the prosecutrix by using criminal force and other act like touching her genitals and also used obscene words and committed other act. At that time, both the applicants were not present. They were along with other girls standing at a distance from where co-accused taken forcibly the prosecutrix. With this, neither they shared common intention with Avinash or Tarun Sahu nor they made any criminal conspiracy so as to facilitate Avinash for the entire act, though they did not oppose the above act of co-accused Avinash but this act alone may not constitute the principle offence and as they have not shared

common intention and also they are in custody since long, they are first offender, they have no criminal antecedent, they may be granted bail during trial. They will not commit any crime in future.

5. Per contra, learned State counsel opposes the arguments advanced on behalf of the applicants and submits that the applicants are also conspirator. They made a conspiracy along with other co-accused Tarun Sahu and by the said conspiracy helped co-accused Avinash for committing the entire act. Hence instant MCRC may be dismissed. However he fairly concedes that no criminal antecedent of the applicants is reported by the police in the case diary.
6. Perused the matter.
7. Both the applicants are aged about 20 and 19 years, they are in custody for last more than 6 months and 7 months, they have no criminal antecedent, the coordinate bench has dismissed the anticipatory bail petition of co-accused Avinash Varma. As aforementioned case of Avinash Varma and Tarun Sahu may be distinguishable from the present applicants. Tarun Sahu is granted bail by the Juvenile Justice Board, co-accused Avinash is absconding, though applicants were in company of prosecutrix and other girls, they visited dam and while returning together, there was some communication between Avinash and Tarun, thereafter Avinash came and took the prosecutrix forcibly at a distance along with co-accused Tarun Sahu. Though the applicants did not object the act of co-accused Avinash but on perusal of entire matter prima facie for the purposes of deciding the instant bail petition, it appears that the case of the present applicant is distinguishable from Tarun who took active role in commission of crime along with Avinash. On consideration of entire facts and looking to the age of the applicants, I am inclined to grant one opportunity to the applicants to live peacefully in the society without committing any crime. Consequently, instant MCRC is

allowed. The applicants are directed to be released on bail on each of them furnishing a personal bond in the sum of Rs. 50,000/- with two solvent sureties each of Rs. 25,000/- for each applicant to the satisfaction of the trial Court/Special Judge under the Act of 2012, as the case may be, for their appearance before the said Court till disposal of the trial regularly as and when directed by the said Court.

8. It is made clear that this order granting bail to the applicants shall stand cancelled automatically without reference to the bench by the Court below if (i) the trial Court finds that the applicants suppressed filing or pendency of any other application for grant of bail before this court or the Hon'ble Apex Court intentionally, (ii) the applicants do not cooperate in the trial; (iii) the applicants are found to be involved in any offence of the like nature; (iv) the trial Court finds that the applicants remain absent without any sufficient and cogent reason. The applicants are further directed to appear before the concerned SHO/IO/in-charge of the Police Station Bortalav, Distt. Rajnandgaon (CG) on 1st and 3rd Monday of every month at 11 am positively till trial. If the applicants fail to do so, concerned police may intimate the trial Court and if the trial Court held that the applicants remain absent without any cogent and proper reason as directed, the bail granted to applicants shall stand cancelled by the trial Court without further reference to the bench under intimation. If bail is cancelled automatically in view of above, the Court below may proceed further under the provisions of law under intimation.
9. In addition, the applicants are directed not to communicate / contact in any manner with the prosecutrix, her family members and the witnesses cited in the charge sheet or attempt to ask for any favour in the trial directly or indirectly. If so, they may report the said act to the trial Judge and if the trial Judge finds that in

any way the applicants directly or indirectly gave pressure for illegal favour in the trial or other wise, the bail granted to the applicants shall be cancelled without further reference to the bench and the concerned trial Court may take the applicants in custody including other measures as provided under the law.

10. Registrar (Judicial) is directed to send a copy of this order to the concerned trial Judge and also to provide a copy of the order to the non-applicant/State for placing it with the case diary to be returned to the concerned police for compliance and information.

11. CC as per rules.

Sd/-
(Chandra Bhushan Bajpai)
Judge