

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 2922 of 2017

- Radheshyam Kashyap S/o Charuram Kashyap, Aged About 34 Years R/o Malda, Police Station Hasaud, District Janjgir Champa, Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Pali, District Korba, Chhattisgarh.

---- Non-applicant

For Applicant : Shri Wasim Miyan, Advocate.

For Non-applicant/State : Shri Vinod Tekam, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

22.09.2017

1. Heard the matter finally.
2. Learned counsel for the applicant would submit that the applicant has been arrested in connection with Crime No. 76/2017 on 16.04.2017 by Police Station Pali, District Korba (C.G.) for the offence under Section 363, 354 of IPC & Section 8 of Protection of Children from Sexual Offences Act, 2012 (In brevity 'the POCSO Act').
3. Learned counsel for the applicant submits that after investigation police had filed charge-sheet, which is presently pending before the Special Judge under the POCSO Act, Katghora, Distt. Korba, (C.G.) as Special Criminal Case (POCSO) No. 12/2017.

As per the allegation, on 15.04.2017 when the prosecutrix aged about 11 years was present before her residence the applicant came on a motor cycle and offered the prosecutrix for the sweets and taken her to a house at Saila Road and thereafter taken her inside the house and also put his hands inside the frock of the prosecutrix and was touching her body, when the prosecutrix resisted for the same and held the hand of the applicant, the applicant attempted to press the neck of the prosecutrix. Thereafter, the prosecutrix deliberately shown her as unconscious and when the applicant left her the prosecutrix opened the door and returned to her residence. Learned counsel for the applicant would further submit that the applicant is the first offender, he will not commit any offence in future, trial make take some time for its conclusion, he may be granted bail.

4. Per contra, learned counsel for the non-applicant/State opposes the arguments advanced on behalf of the applicant and would submit that looking to the entire act of the applicant, the instant MCRC may be dismissed, though fairly conceded that there is no any criminal antecedent of the applicant.

5. Perused the entire material.

6. As per the arrested memo, the applicant is a Shiksha Karmi Grade-III posted within the jurisdiction, he in custody for last 5 months and 6 days till date, there is no any criminal antecedent reported against the applicant, though looking to the noble job of applicant and the act surfaced along with the Mature age of the applicant, the incident is of bad nature, but looking to the long custody, he is the first offender and other facts including the fact that

the trial may take some time, I am inclined to grant one opportunity to the applicant so that he shall not commit any offence in future and shall remain peacefully in the society without committing any crime.

7. Consequently, the instant MCRC is hereby allowed.

8. It is directed that the applicant shall be released on bail on furnishing a personal bond in the sum of Rs. 1,00,000/- with two solvent sureties each of Rs. 50,000/- each to the satisfaction of the Trial Judge for his appearance before the said Court as and when directed till trial.

9. It is made clear that this order granting bail to the applicant shall stand cancelled automatically without reference to the bench by the Court below if (i) the trial Court finds that the applicant suppressed filing or pendency of any other application for grant of bail before this Court or the Hon'ble Apex Court intentionally; (ii) the applicant does not cooperate in the trial; (iii) the applicant is found to be involved in any offence of the like nature; (iv) the trial Court finds that the applicant remains absent without any sufficient and cogent reason. If bail is cancelled automatically in view of above, the Court below may proceed further under the provisions of law under intimation.

10. The applicant is further directed to appear before the concerned SHO/IO/in-charge, as the case may be, of Police Station Pali, District Kobra (C.G.) on every 1st and 3rd Monday of every month till the conclusion of the trial. If the applicant fails to do so, concerned police may intimate the trial Court and if the trial Court held that the applicant remains absent without any cogent reason

and proper reason as directed, the bail granted to applicant 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.

11. In addition, the applicant is directed not to communicate/contact in any of the manner with the prosecutrix, her family members and witnesses cited above in the charge-sheet or attempt to ask for any favour in the trial. If so, the prosecutrix, her family members and the witnesses may report the said act to the trial Judge and if the trial Judge finds that in any way the applicant gave pressure or any attempt for any illegal favour in the trial or otherwise directly or indirectly, the bail granted to the applicant shall be cancelled without further reference to the Bench and the concerned trial Court shall take the applicant in custody including other measures as provided under the law.

12. As there is no any facts stated by both the parties whether the the applicant is working as Shiksha Karmi Grade-III in the school were probably the prosecutrix is studying, but if so, it would be appropriate to direct so that there may not be any chance for any other communication, threat or attempt to damage either to the prosecutrix or with her educational career in any way. With this, this Court further directs that if the prosecutrix is studying in the school where the applicant is working as Shiksha Karmi Grade-III, he shall not enter to that school where the prosecutrix is studying till the conclusion of the trial; if the applicant attempts or move to enter into

that school till the disposal of the trial, any person including the prosecutrix, her family members may submit the said facts before the trial court and if the trial Court finds that applicant entered in the said school and not complied with the order passed by this Court, the bail granted to the applicant may be cancelled by the trial Court without any reference to the Bench under intimation. The State is also directed to take action for keeping the applicant away from the said school if surfaced under the administrative action as deemed fit.

13. The MCRC allowed.

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

15. Certified Copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
Judge