

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Criminal Case No.3172 of 2017**

- Kailash Singh S/o Babulal Singh, Aged About 33 Years By Caste- Parihar, R/o Village Baroda Basti, Thana-Kamthi, District-Nagpur, Maharashtra, Permanent R/o Village- Baloudi, Thana Biyouhari, Distict- Shahdol, Madhya Pradesh

---- Applicant

Versus

- State Of Chhattisgarh Through- Station House Officer, Police Station- Mahasamund, Civil & Revenue District- Mahasamund, Chhattisgarh.

---- Respondent

For Applicant	: Shri Sunil Sahu, Advocate
For Respondent/State	: Shri Anant Bajpai, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****03.7.2017**

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.319/2016 registered in Police Station Mahasamund Distt. Mahasamund for the offence punishable under Sections 363, 366, 376 of the Indian Penal Code and and under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act').

3. Learned counsel for the applicant submit that the applicant has been arrested on 19.01.2017, after investigation, police has filed charge sheet which is pending before Additional Sessions Judge (FTC)/ Special Judge under the POCSO Act, Mahasamund

as Special Criminal Case No. 12/17. Learned counsel for the applicant would submit that as per the statement of the prosecutrix recorded under Section 164 of Cr.P.C., she had an affair with the applicant and on 12.6.2016 she went along with him without informing anybody, left for Nagpur, performed marriage there and both of them were residing at Nagpur for last seven months as husband and wife. The police has arrested the applicant when he came to Rajim. Learned counsel for the applicant would further submit that the prosecutrix was examined before the trial Court and she has not supported the case of the prosecution. Looking to this fact, the applicant may be enlarged on bail.

4. Per contra, learned counsel for the State opposes the arguments advanced on behalf of the applicant and would submit that police during investigation collected material regarding age of the prosecutrix which goes to show that she is a child under the definition of Section 2(1)(d) of the POCSO Act and also there is no proof admissible regarding marriage of the applicant with the prosecutrix and also since the prosecutrix was minor, her leaving the house with the applicant and her consent is of no legal consequences and the offence under Sections 363 & 366 has been committed since then.

5. Perused the entire material.

6. There is no material to demonstrate that the applicant and the prosecutrix were legally wedded husband and wife and also

looking to the material regarding age of the prosecutrix, as prima facie she is a child, further there is no attempt on the part of the applicant that the applicant and the prosecutrix want to marry in admissible manner, i.e. may be under the Special Marriage Act and other forum.

7. On due consideration of the entire facts, I am not inclined to grant bail to the applicant.

8. Accordingly, application filed under Section 439 of Cr.P.C. is hereby dismissed.

Sd/-

(Chandra Bhushan Bajpai)

JUDGE