

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 3329 of 2017**

- Aabaad Ali, S/o Mohammed Ali, aged about 32 years, R/o Baijnathpara (Behind Madarsa) P.S. City Kotwali, Raipur, District Raipur (C.G.)

---- Applicant**Versus**

- State of Chhattisgarh Through: Police Station - City Kotwali, Raipur, District Raipur (C.G.)

---- Respondent

For Applicant. : Shri Adil Minhaj, Advocate.
For Respondent. : Shri Vaibhav Goverdhan, P.L. for the State

Hon'ble Shri Justice Pritinker Diwaker**Order on Board****13/11/2017**

1. The applicant has filed this application under Section 439 of the Code of Criminal Procedure for grant of regular bail as he is in custody in connection with Crime No.248/2016 registered at Police Station : City Kotwali, Raipur, District Raipur (C.G.) for the offence punishable under Sections 376(2) (i), (n), 506 of IPC & Section 5(m) and 6 of Protection of Children from Sexual Offences Act, 2012.
2. Case of the prosecution in brief is that on 05.01.2015, the Prosecutrix got admitted in Raipur Madarsa and she remained there till 28.07.2015. In this madarsa, the date of birth of the Prosecutrix has been recorded as 30.10.1997. After leaving Raipur Madarsa, the prosecutrix got herself admitted in

Kanker Madarsa on 23.08.2016 and there her date of birth has been recorded as 30.07.2002. Further case of the prosecution is that after giving birth to a child on 30.09.2016, FIR was lodged by the prosecutrix alleging in it that she was subjected to rape while she was at Raipur Madarsa.

3. Learned counsel for the applicant submits that there is no legally admissible evidence showing the Prosecutrix to be minor and if Prosecutrix is considered to be major, apparently she is a consenting party. It has been further argued that even the exact date, on which the offence is alleged to have been committed, has not been given and it is not a case of the Prosecutrix that she was subjected to rape continuously. While referring the Court statement of the Prosecutrix, it has been argued by learned counsel for the applicant that even the Prosecutrix has failed to identify the person who subjected her to rape.
4. On the other hand counsel for the State opposes the bail application and submits that Court statement of the Prosecutrix cannot be considered at this stage. He further submits that considering the fact that the applicant is Maulana of the concerned Madarsa, he is not entitled for bail.
5. I have heard learned counsel for the parties and perused the record.
6. Considering the evidence related to age of the Prosecutrix and inordinate delay in lodging the FIR, the evidence related to her age, without further entering into merits of the case, this Court is of the view that it is a fit case to release the applicant on bail. Accordingly, his application filed under

Section 439 of the Code of Criminal Procedure is allowed.

7. It is directed that in the event of the applicant's furnishing a personal bond in the sum of Rs.50,000/- with one surety for the like sum to the satisfaction of the concerned Court, he shall be released on bail.

Sd/-

(Pritinker Diwaker)
JUDGE

Vijay