

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Criminal Case No.3659 of 2017**

- Rohit Yadav S/o Ramsufal Yadav Aged About 20 Years, R/o. Bharatpur Amiliha, at present R/o New Sarkanda, Police Station - Sarkanda, District - Bilaspur, Chhattisgarh.

---- Applicant**Versus**

- State Of Chhattisgarh Through : Station House Officer, Police Station - Sarkanda, District - Bilaspur, Chhattisgarh.

---- Respondent

For Applicant	: Shri Rahul Mishra, Advocate
For Respondent/State	: Shri Arvind Shukla, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****21.6.2017**

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.162/2017 registered in Police Station Sarkanda, Distt. Bilaspur for the offence punishable under Sections 354 & 506 of the Indian Penal Code and Section 11 & 12 of Protection of Children from Sexual Offences Act, 2012 (for short 'the Act of 2012').

3. Learned counsel for the applicant submits that the applicant has been arrested on 06.3.2017, after investigation, concerned police has filed charge sheet against the present applicant, which is pending as Special Criminal Case No.31/17 (wrongly mentioned as Special Session Case No.31/2017 by the trial Judge in the order

sheet dated 08.5.2017). Learned counsel for the applicant submits that the applicant is aged about 20 years, he is the first offender and is in custody for three months and 15 days, charge sheet has been filed , the trial may take sometime for its conclusion. Though in the statement recorded under Section 161 of Cr.P.C., the prosecutrix (name not mentioned) had stated regarding the use of criminal force by the applicant against her with intention to outrage her modesty and also threatened her not to disclose this fact to anybody. The prosecutrix was a child as defined in Section 2(1)(d) of the Act 2012 , but when the statement of the prosecutrix recorded by Judicial Magistrate First Class, Bilaspur under Section 164 of Cr.P.C., the prosecutrix had not said anything against the applicant on oath. With this, prima facie the applicant had a good case for consideration of bail as there are two contradictory statements made by the prosecutrix. The applicant will not commit any offence in future, hence, he may be granted bail.

4. Per contra, learned counsel for the State opposes the bail application and would submit that the applicant deliberately fell down over the body of the prosecutrix and also used criminal force to outrage her modesty repeatedly and also gave her threat not to disclose this to anybody. Hence looking to the gravity of the offence, the application may be dismissed.

5. Perused the entire material.

6. The applicant is aged about 20 years, he is first offender, though in the statement of the prosecutrix recorded under Section 161 of Cr.P.C., the prosecutrix made allegation against the applicant

regarding use of criminal force and also his threat not to disclose this matter to anybody but on the other side when she was examined under Section 164 of the Code, she had not said anything against the applicant. The applicant is in custody for about 3 three months and fifteen days, charge sheet has been filed, the trial may take sometime for its conclusion, and on due consideration of the entire facts, I am inclined to grant one opportunity to the applicant, so that he shall not commit any similar or other offence in future.

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.40,000/- with one solvent surety of like sum amount to the satisfaction of Special Judge authorised to take cognizance under the Act of 2012 as per Sections 28 & 33/Additional Sessions Judge (FTC), Bilaspur for his appearance before the said Court as and when directed.

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; and (iv) the trial Court finds that the applicant remains absent without any sufficient and cogent reason. If bail is cancelled automatically in view of the

above, the Court below may proceed further under the provisions of law, under intimation.

10. This Court observed that the trial Court has registered the matter under the head of Special Sessions Case No.31/2017. Upon perusal of Section 33 of the Act 2012, it appears that the Special Court may take cognizance of any offence without the accused being committed to it for trial. This is a matter where the committal under Section 209 of the Cr.P.C. is not required, with this, the matter cannot be the Special session case. On the other hand, the matter shall be Special Criminal Case under the Act of 2012, because the police has filed charge sheet under Sections 354 and 506 of the IPC and also under Section 11 & 12 of the Act of 2012. Hence, the trial Court is directed to correct the nomenclature given regarding the present matter and be careful in future for mentioning the correct nomenclature of any case under the law.

11. This Court also observed that the Court below had mentioned her designation as Additional Sessions Judge (FTC), Bilaspur CG whereby the trial Judge omitted to mention the correct designation of the Court as the matter belongs to the Act of 2012, the concerned Court is a designated Special Court under Section 28 of the Act 2012 and taking cognizance under Section 33 of Act 2012. With this, the Court below must write her designation as Special Judge under the Act of 2012/Additional Sessions Judge (FTC) Bilaspur. With this, the Court below is directed to correct the name of the Court under her signature in the matter and further directed to remain cautious in future to write correct designation below her signature.

12. A copy of order be sent to the concerned Court below through usual and fax mode for compliance in future.

Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE

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