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HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 3706 of 2017

- Javed Ali, S/o Late Saukat Ali, Aged About 26 Years, R/o N.F. 51, C.S.E.B. Colony, Patharipara, Korba East Tahsil & District - Korba, Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh, Through State Of Chhattisgarh, Through Police Chauki Rampur, Police Station Kotwali, District Korba, Chhattisgarh.

---- Respondent

For Applicant : Shri Vikash Pandey, Advocate.
For Non-applicant/State : Shri Anant Bajpai, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

13.10.2017

Heard the matter finally.

2. Learned counsel for the applicant would submit that the applicant has been arrested in connection with Crime No.207/2017 on 03/05/2017, Outpost Rampur, Police Station Kotwali, Distt. Korba (C.G.) for the offence under Section 292, 506/34 of the Indian Penal Code and under Section 12 of the Protection of Children from Sexual Offences Act, 2012 (For short “POCSO Act”) and under Section 67A, 67B of the Information Technology Act, 2000.

3. Learned counsel for the applicant submits that after investigation police had filed charge-sheet against the present applicant and also showing co-accused Ashu and Bablu absconding, which is presently pending before the Additional Sessions Judge

(FTC)/Special Judge under the Protection of Children from Sexual Offences Act 2012, Korba (C.G.) as Special Criminal Case (Protection of Children from Sexual Offences Act, 2012) No.13/17. Learned counsel for the applicant would further submit that applicant is in custody since long, charge-sheet has been filed, though mobile has been seized from the applicant. But, in the said mobile there is no obscene alleged video. As per allegation, applicant deleted the same, as per facts surfaced in the charge-sheet, the applicant and 2 other absconded accused by sharing common intention remove the cloth of a child (victim) aged about 17 years under the definition of Section 2d of the Protection of Children from Sexual Offences Act, 2012 and thereafter the absconded co-accused Ashu had prepared the video of the said child nude, the present applicant and co-accused Bablu cooperated for the said act and thereafter the said video was circulated in whatsapp to many people. Learned counsel for the applicant would submit that applicant is the first offender and he will not commit any offence in future, he may be granted bail till trial.

4. Per Contra, learned counsel for the respondent/State opposes the argument advanced on behalf of the applicant and would submit that looking to the act of the present applicant as he had cooperated the co-accused Ashu to remove the cloth of the child and to prepare a video of the said child in the nude condition and gave threat to life and thereafter as the said video was circulated in the whatsapp, though fairly considered that there is no criminal antecedent of the applicant, hence the instant MCRC may be dismissed.

5. Peruse the entire material.

6. As the applicant is the first offender and he is in custody since 5 months and 10 days till date, charge-sheet has been filed, trial may take some time and there is no earlier criminal antecedent reported against the applicant, though looking to the entire prosecutions case fact are indecent and punishable, but on looking to the long detention period of the applicant, 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 allowed.

8. The applicant is directed to be released on bail on his furnishing a personal bond in the sum of Rs.50,000/- with two solvent sureties of amount Rs.25,000/- each to the satisfaction of Trial Judge, (C.G.) for his appearance before the said Court regularly as and when directed by the said Court.

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 remain 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. It is further directed that till the conclusion of the trial, present

applicant shall mark their appearance before the Station House Officer/IO, Outpost Rampur, Police Station Kotwali, Distt. Korba **on First and Third Monday of every month at 11:00 am.** It is further made clear that if the applicant fails to do so, the concerned police may inform the trial Court for the act and if their non-appearance found to be without any proper and cogent reason, the instant order granting bail to the applicant shall automatically be cancelled by the trial Court without further reference to the Bench, under intimation.

11. Register (Judl.) is further directed to send a copy of the 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.

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

13. Certified copy as per rules.

Sd/-

(Chandra Bhushan Bajpai)

Judge

Deeptijha