

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 3689 of 2017**

- Ramnandan S/o Kanwal Singh Gond, Aged About 18 Years R/o Village Phuljhar, P. S. Pasan, Distt, Korba Chhattisgarh.

---- Applicant**Versus**

- State Of Chhattisgarh Through The District Magistrate, Korba Chhattisgarh.

---- Respondent

For Applicant	: Shri Ravindra Agrawal, Advocate
For Respondent/State	: Shri Arvind Shukla, PL

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

1. 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.71/2016, registered at Out Post Korbi, Police Station, Pasan, Distt. Korba(CG) for the offence punishable under Section 376 IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short the POCSO Act).
3. Learned counsel for the applicant submits that the applicant is arrested on 9th October, 2016 and after investigation police had filed charge sheet which is pending before the Special Judge under the POCSO Act, Katghora, District Korba(CG) as Special

Criminal Case No. 30/2016 (the nomenclature of the said case is wrongly mentioned as Special Sessions Trial No.30/2016 by the trial Judge as surfaced in the copy of deposition of few witnesses filed by the applicant in the matter). He further submits that charge sheet has been filed and the trial is going on. As per facts of the case, lodging of the FIR was after 5 days, though reason for lodging the FIR lately is mentioned, but the said reason does not inspire confidence. The FIR is named one but when submission of the prosecutrix is recorded under Section 164 Cr.P.C. dated 14.10.2016, she had not disclosed the name of the applicant in the said submission. Also the MLC report does not disclose commission of rape. Though the prosecutrix has been examined as PW1 in the trial, who is aged about 10 years, she has deposed against the applicant, but on account of aforementioned fact, the applicant may be released on bail.

4. On the other hand, learned counsel for the State opposes the bail application on the basis of evidence collected and submission of the prosecutrix during trial and the way she deposed against the applicant and supported the prosecution story.

5. I have heard the counsel appearing for the parties and perused the material.

6. For delay in lodging the FIR, a reason is mentioned in the said document; the effect of alleged non discovery of the name of the applicant in the statement of the prosecutrix under Section 164 Cr.P.C. is a matter of appreciation; the trial is going on and the prosecutrix is examined and thereafter she has been cross examined also by the defence. Even apart, the appreciation of MLC report is also a subject matter of appreciation during trial. Looking to the entire facts, the prosecutrix is aged 10 years and what ever is surfaced in the charge sheet, I am not inclined to grant bail to the applicant.

7. Consequently, the bail application filed under Section 439 of the Cr.P.C. is dismissed.

8. While deciding the matter, this Court observed that the trial Judge had mentioned the matter as Special Sessions Trial No. 30/2016. It is submitted on behalf of the respondent/State that the charge sheet has been directly filed before the concerned Special Court under the relevant provisions of Section 33 of the POCSO Act.

9. The trial Court is designated as a Special Court under the relevant provisions of Section 28 of the POCSO Act and since the matter is never committed by the Magistrate, as provided in Section 209 of the Cr.P.C. or any other provision of the Cr.P.C., with these facts, the matter cannot be termed as a Special

Sessions Trial. On the other hand, it should be Special Criminal Case under the POCSO Act. Though there is also an offence registered under Section 376 IPC, but on account of filing of the charge sheet, also under Section 4 of the POCSO Act and as provided in Section 42 of the POCSO Act that even if the offender found guilty of the matter as provided in Section 42, he shall be liable for punishment which is greater in degree. After taking the entire aforementioned legal provision together, the matter should be registered as Special Cr. Case under the POCSO Act and should not be registered as Special Sessions Trial.

10. The Court below is directed to correct the nomenclature of registration of the present matter. Further, directed to be careful in mentioning the correct nomenclature for any matter under the law.

11. Registrar (Judicial) is directed to send the copy of this order to the court below for compliance and future guidance.

Certified copy as per rules.

**Sd/
(Chandra Bhushan Bajpai)
JUDGE**