

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 3836 of 2017

- Phool Singh Nishad S/o Shri Bhagirathi Nishad, Aged About 20 Years, R/o Rajim Road, Indira Chouck, P.S. Arang, District Raipur, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Police Station Arang, District Raipur, Chhattisgarh

---- Non-applicant

For Applicant – Shri Devershi Thakur, Advocate.

For Non-applicant/State – Shri Ashok Swarnkar, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

18-09-2017

1. Heard the matter finally.
2. Learned counsel for the applicant would submit that the applicant held arrested in connection with Crime No.90/2017 on 13-02-2017 by P.S. Arang, District Raipur, Chhattisgarh for the offence under Section 376 of the IPC and Section 3(1)(w)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'Atrocities Act'). After investigation police had filed the charge sheet, which is presently pending before the Special Judge under the Atrocities Act Raipur, C.G. as Special Sessions Trial (Atrocities) No.98/17. Learned counsel for the applicant would further submit that the applicant is aged about 20 years, he is in custody since long and in the written complaint, statement under Section 161, 164 of the Cr.P.C. it is nowhere alleged that the applicant committed sexual intercourse without consent and will of the prosecutrix. Hence as the prosecutrix is minor, the matter may be a case of consent and also as the FIR has been lodged after about 5 years. The applicant will not commit any offence in future. He may be enlarged on bail.
3. Per contra, learned counsel for the non-applicant/State opposed the argument advanced on behalf of the applicant.

4. Perused the entire material.

5. As the applicant is in custody since 7 months and 5 days till date, on due consideration, as there is nothing in the written complaint, statement under Section 161, 164 of the Cr.P.C. which prima facie may constitute the ingredients of rape as defined under Section 375 of the IPC for the purpose of appreciation of the instant bail petition, with this, without commenting anything on its merit, I am inclined to grant one opportunity to the applicant so that he shall not involve himself in any offence and shall live peacefully in society. Consequently, the instant MCRC is hereby allowed. The applicant is directed to be released on bail on his furnishing a personal bond in the sum of Rs.30,000/- with one solvent surety of the like sum to the satisfaction of the trial Judge for his appearance before the said Court as and when directed till trial.

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

7. In addition, the applicant is directed not to communicate/contact in any of the manner with the prosecutrix, her family members and the witnesses cited in the charge sheet or attempt to ask for any favour in the trial. If so, the prosecutrix, her family members and the witnesses may report the said act to the trial Judge and if the trial Judge finds that in any way the applicant gave pressure or any attempt for any illegal favour in the trial or otherwise directly or indirectly, the bail granted to the applicant shall be cancelled without further

reference to the Bench and the concerned trial Court shall take the applicant in custody including other measures as provided under the law.

8. Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
Judge

Aadil