

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 4006 of 2017**

Thanu Ram Kenwat @ Dhanuram S/o Shri Motilal Kenwat, Aged About 23 Years R/o Village Tanaud, Police Station Sheorinarayan, Tahsil Pamgarh, District Janjgir Champa, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through Station House Officer, Police Station Ajak Janjgir District Janjgir Champa, Chhattisgarh.

---- Respondent

For applicant	Mr. Ashok Verma, Adv.
For Respondent/State	Mr. Sumit Jhanwar, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****17-7-2017**

1. Heard finally.
2. The applicant has preferred this application for grant of bail as he is arrested on 11-4-2017 in connection with Crime No. 4/2017 registered in PS AJAK, Janjgir, Distt. Janjgir Champa (CG) for offence punishable under Section 354 (k) of IPC (correct provision is Section 354 A of the IPC) read with Section 8 of the Protection of Children from Sexual Offences Act, 2012 (in brief 'POCSO Act') and Section 3 sub-section (1)(b)(i) and Section 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in brevity 'SCST Act') (correct provision is Section 3 sub-section (1)(w)(i) and Section 3 sub-section (2)(va). It is submitted that after investigation charge sheet has been filed and the same is pending before the Additional Sessions Judge/Special Judge under the POCSO Act (FTC), Janjgir Champa, also authorized to take cognizance under the SCST Act (if such authorization exists) as Special

Case No. 13/2017. The applicant is in custody since 3 months and 6 days. He is aged about 23 years. He is first offender. The incident happened during Holi festival. As per allegation, knowing well that the prosecutrix belongs to scheduled castes category and also a child, the applicant used criminal force so as to outrage her modesty by pressing breast. The applicant will not commit any offence in future. He may be granted bail as the trial may take time.

3. Per contra, learned State counsel opposes the arguments advanced on behalf of the applicant and submits that deliberately the applicant knowing well that the prosecutrix is a child and belongs to scheduled castes category, pressed her breast and outraged the modesty. Hence instant MCRC may be dismissed.
4. Perused the matter.
5. On due consideration, as the applicant is the first offender, he is in jail since 3 months and 6 days, charge sheet has been filed, trial may take sometimes and barring the allegation as aforementioned, there was no any other act committed by the applicant, as submitted he will not commit any crime in future, I am inclined to grant one opportunity to the applicant to live peacefully in the society without committing any crime. Consequently, instant MCRC is allowed. 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 each of Rs. 25,000/- to the satisfaction of the trial Court for his appearance before the said Court regularly as and when directed by the said

Court.

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: (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 manner with the prosecutrix 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 prosecutrix and the witnesses may report the said act to the trial Judge and if the trial Judge finds 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.
8. Before conclusion, this court perused the order dated 24-5-2017 passed by the Sessions Judge, Janjgir Champa in the said matter. The Sessions Judge had wrongly concluded the section as Section 3(1)(b)(i) and Section 3(2)(5) of the SCST Act. On

perusal of entire charge sheet and the amendment incorporated in the statute, it prima facie appears that looking to the facts in the matter, provisions of Section 3 sub-section (1)(w)(i) and Section 3 sub-section (2)(va) of the SCST Act, 1989 are correct provision. The concerned court is directed to take care in future in mentioning the provisions of law. It is the duty of the court to mention correct provision of law. May be, the prosecution and the defence wrongly mention any law but the court has to correct the said error.

9. Registrar (Judicial) is directed to send a copy of this order to the concerned trial Judge.
10. CC as per rules.

Sd/-
(Chandra Bhushan Bajpai)
Judge