

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 4035 of 2017

- Gaurav Mishra S/o Sudhakar Mishra, Aged About 31 Years, R/o Sinchai Colony, Darri, District Korba (Chhattisgarh)

---- Applicant

Versus

- State Of Chhattisgarh Through : Chauki- C.S.E.B., Thana Kotwali, District Korba (Chhattisgarh)

---- Non-applicant

For Applicant – Shri Samir Singh, 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. At the outset, learned counsel for the applicant would submit that on account of clerical mistake, in the petition Section 394 has been mentioned, but the correct Section is 294 of the IPC, hence, the same may be read accordingly.
3. Learned counsel for the applicant would submit that the applicant held arrested in connection with Crime No.353/2017 on 27-05-2017 by Outpost C.S.E.B., P.S. Kotwali, District Korba, Chhattisgarh for the offence under Section 294, 323, 506 Part II, 354 of the IPC and Section 8 of Protection of Children from Sexual Offences Act, 2012 (in short 'the POCSO Act'). After investigation charge sheet been filed, which is presently pending before the Second Additional Sessions Judge (FTC)/Special Judge under the POCSO Act Korba, C.G. as Special Criminal Case (POCSO) No.17/17. Learned counsel for the applicant would further submit that the applicant is first offender and as per the allegation, once the applicant made indecent comment to the prosecutrix aged about 17 years and thereafter again on 24-05-2017 made

unnecessary comment for her teeth and also on 25-05-2017 again the applicant made unwarranted comment for her teeth, also gave her threat to kill and assaulted and slapped her three or four times, thereafter, at the pressure of his parents said sorry casually. He will not commit any offence in future. He may be granted bail during trial.

4. Per contra, learned counsel for the non-applicant/State opposed the argument advanced on behalf of the applicant and submitted that thrice the applicant followed the prosecutrix, made indecent unwanted and uncalled comments, with this, used criminal force to outrage the modesty of a woman, as the applicant is aged about 31 years, looking to the entire facts, the MCRC may be dismissed.

5. Perused the entire material.

6. As the applicant is in custody since 3 months and 20 days till date, police had not reported any earlier criminal antecedent, also on perusal of the the entire facts as surfaced in the statement of the prosecutrix under Section 161, 164 of the Cr.P.C., 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.50,000/- with two solvent sureties of Rs.25,000/- each to the satisfaction of the trial Judge for his appearance before the said Court as and when directed till trial.

7. 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.

8. It is further directed that till conclusion of the trial the applicant shall appear in person before the IO/SHO/In-charge, as the case may be, of Outpost C.S.E.B., P.S. Kotwali, District Korba, C.G. in 1st and 3rd Monday of every month at 11.00 a.m. sharp. If the applicant failed to mark his appearance before the concerned police as directed, the police may inform the trial Court for the same and if the trial Court appreciates that the applicant was not present before the concerned police for no any sufficient or cogent reason, the bail granted to the applicant shall stand cancelled by the trial Court without further reference to the Bench.

9. Registrar (Judicial) is directed to send a copy of this order to the concerned trial Judge and also to provide a copy of the order to the non-applicant/State for placing it with the case diary to be returned to the concerned police for compliance and information.

10. 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.

11. Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
Judge