

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 4142 of 2017

- Uttam Dahariya S/o Chandra Kumar Dahariya, Aged About 20 Years, R/o Chhedikhedi Hall Pana, Village Riko, Police Station Mandirhasaud, District Raipur, Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Urla, District Raipur, Chhattisgarh.

---- Non-applicant

For Applicant – Shri Vivek Tripathi, Advocate.

For Non-applicant/State – Shri Arvind Shukla, 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.07/2017 on 16-01-2017 by P.S. Urla, District Raipur, C.G. for the offence under Section 363, 366, 376 of the IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 (in short 'the POCSO Act'). After investigation charge sheet been filed, which is pending before the VIIth Additional Sessions Judge (FTC)/Special Judge under the POCSO Act Raipur, C.G. as Special Criminal Case (POCSO) No.74/17. Learned counsel for the applicant would further submit that as per the statement of the prosecutrix recorded under Section 161 of the Cr.P.C., it appears that she herself went along with the applicant and the applicant had not made any physical relation, hence, at the most the present matter may come under the ambit of Section 363 of the IPC. Therefore, the applicant may be granted bail during trial.
3. Per contra, learned counsel for the non-applicant/State would submit that as per the material collected, the prosecutrix is child as defined in

definition of Section 2(1)(d) of the POCSO Act and also during investigation police had recorded her statement under Section 161 of the Cr.P.C. As the prosecutrix is a child, hence her consent, even for the sake of argument surfaced, cannot be held as valid consent as she was minor and also looking to the entire facts and offence under Section 376 of the IPC, Section 4 of the POCSO Act shown in the charge sheet, the instant MCRC may be dismissed.

4. Perused the entire material.

5. Looking to the material collected against the applicant, prima facie, it cannot be held that the matter comes under the ambit of Section 363 only. Looking to the evidence collected, the charges against the applicant and facts surfaced, I am not inclined to grant bail to the applicant. Consequently, the instant MCRC is hereby dismissed.

Sd/-
(Chandra Bhushan Bajpai)
Judge