

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 4318 of 2017

- Durgesh Gayakwad S/o Hulas Gayakwad, Aged About 23 Years, R/o Ward No.05, Satnami Para, Village Dhursa, Police Station Panduka, District Gariyaband, Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through Police Station Mainpur, District Gariyaband, Chhattisgarh.

---- Non-applicant

For Applicant – Shri Mohd. Afroz Athar, Advocate.

For Non-applicant/State – Shri N.K.Mehta, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

08-08-2017

1. Heard the matter finally.
2. Learned counsel for the applicant would submit that the applicant held arrested in connection with Crime No.123/16 on 27-4-2017 by Police Station Mainpur, Civil District Raipur, C.G. for the offence under Section 363, 366, 376(2)(h) of the IPC and Section 4, 6 of Protection of Children from Sexual Offences Act, 2012 (in short 'the POCSO Act'). After investigation police had filed the charge sheet which is pending before the Additional Sessions Judge (FTC)/Special Judge under the POCSO Act Gariyaband, C.G. as Special Criminal Case POCSO No.27/17. Learned counsel for the applicant would further submit that the applicant is young boy, aged about 23 years, from poor family. He and the prosecutrix were in love affairs and the prosecutrix left with him of her own. They married before Arya Samaj and returned and thereafter the applicant is arrested. Though as per the Dakhil Kharij Register the date of birth of the prosecutrix is 19-04-1999 and the date of incident is 16-12-2016, but looking to the entire fact that ultimately they had married, the applicant 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 prosecutrix is child under the definition of Section 2(1)(d) of the POCSO Act, with this she had not lawfully consented for the company of the applicant. Looking to the entire matter surfaced and also the matter regarding Section 376(2)(h) of the IPC and other facts, without commenting anything on its merit, I am not inclined to grant bail to the applicant. Consequently, the instant MCRC is hereby dismissed.

Sd/-

(Chandra Bhushan Bajpai)
Judge