

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Criminal Case No.4485 of 2017**

- Dwarika Gandharva S/o Dilharan Gandharva Aged About 24 Years R/o Sakin Village Bahatrai Thana Sarkanda District Bilaspur Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Aarakshi Kendra Sarkanda District Bilaspur Chhattisgarh

---- Respondent

For Applicant : Shri Krishna Kumar Khatri, Advocate
 For Respondent/State : Shri Anant Bajpai, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****09.8.2017**

Heard the matter finally.

2. This is an application filed under Section 439 of the Cr.P.C. for grant of regular bail to the applicant, who has been arrested in connection with Crime No.226/2017 registered in Police Station Sarkanda, Distt. Bilaspur (CG) for the offence punishable under Sections 452, 354, 506, 323 of the Indian Penal Code and under Sections 11 & 12 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act').

3. Learned counsel for the applicant submits that the applicant has been arrested on 07.4.2017, after investigation, concerned police has filed charge sheet, which is pending before Additional Sessions Judge (FTC)/Special Judge Under the POCSO Act,

Bilaspur as Special Criminal Case POSCO No.34/2017.

Learned counsel for the applicant would submit that applicant is aged about 24 years, he never involved in any other offence prior to the incident. He is in jail since long, he may be granted bail during trial, co-accused Ajay Singh Thakur has already been granted bail by this Court on 25.7.2017 in M.Cr.C. No.4097/2017, though he was a co-accused for the last part of trespass in the house of the prosecutrix and assaulted the family members of the prosecutrix along with present applicant. As per the allegation, present applicant caught hold the hands of the prosecutrix, aged about 16 years, and asked for sexual favour. He will not commit any offence in future, the trial may take sometime for its conclusion, hence he may be granted bail.

4. Per contra, learned counsel for the State opposes the arguments advanced on behalf of the applicant and would submit that case of co-accused Ajay Singh is distinguishable from the case of the present applicant as the present applicant is the main accused of the incident, who assaulted and threatened the prosecutrix and her family members, looking to the act of the present applicant which was clearly stated by the prosecutrix in her statement recorded under Sections 161 & 164 of the CrPC, and other material, instant bail application may be dismissed.

5. Perused the entire material.

6. The applicant is in custody for four months and two days, charge sheet has been filed, the trial may take sometime for its

conclusion, prosecutrix is aged about 16 years, a child under the definition of Section 2(1)(d) of the POCSO Act and considering the act of the applicant that he asked for sexual favour by holding the hands of the prosecutrix when she was returning along with her sister at 8.30 at night and also considering the fact that he is in custody since long and also considering his age, I am inclined to give one opportunity to the applicant so that he shall not involve in any other offence in future and shall remain peacefully in the society.

7. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed.

8. It is directed that the applicant shall be released on bail on furnishing a personal bond in the sum of Rs.1,00,000/- with two separate solvent sureties of Rs.50,000/- to the satisfaction of the concerned trial Judge for his appearance before the said Court as and when directed.

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

10. It is further directed that till the conclusion of the trial, present applicant shall mark his appearance before the Station House Officer/IO, Police Station Police Station Sarkanda, Distt. Bilaspur **on First and Third Monday of every month at 11.00 am.** It is further made clear that if the applicant without any cogent and proper reason does not appear before the Police of Police Station Sarkanda, Distt. Bilaspur as directed, the concerned police may inform the trial Court for the act and if his non appearance found to be without any proper and cogent reason, the instant order granting bail to the applicant shall automatically be cancelled by the trial Court without further reference to the Bench, under intimation.

11. In addition, the applicant is directed not to communicate/contact in any of the manner with the prosecutrix, family members and witnesses cited in the charge sheet or attempt to ask for any favour in the trial directly or indirectly. If so, the witnesses and the prosecutrix 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 or any attempt for any 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 shall take the applicant in custody including other measures as provided under the law.

12. Registrar (Judl.) is further directed to send a copy of the order to the concerned trial Judge and also to provide a copy of the order to the respondent/State for placing it with the case diary to be returned to the concerned police for compliance and information.

Certified copy as per rules.

Sd/-

(Chandra Bhushan Bajpai)

JUDGE