

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.CR.C. No. 4480 of 2017

Bhishma @ Bhisham Chouhan, S/o. Late Santu Ram Chouhan, Aged About 21 Years, R/o. Village Lata, Police Station- Darri, Tahsil- Katghora, District -Korba Chhattisgarh

----Applicant

Versus

State Of Chhattisgarh, Through : The Station House Officer, Police Station -Darri, District Korba Chhattisgarh

---- Respondent

For Applicant : Mr. Govind Ram Miri with Mr. Basant Kewartya,
Advocates

For Respondent/State : Mr. Arvind Shukla, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

03/11/2017

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicant, who has been arrested on 13.06.2017, in connection with Crime No.104/2016, registered at Police Station – Darri, District – Korba (C.G.) for the offence punishable under Section 363, 366 & 376 of the Indian Penal Code.
2. It is submitted by the learned counsel for the applicant that the applicant is innocent and has been falsely implicated in this case. Prosecutrix was not minor on the date of incident, the school entry for the proof of her date of birth can not be regarded as reliable evidence. As per the case, it is clear that prosecutrix had been a consenting party, who had been with applicant all along all the times, when she

resided with her for about five months together and had physical relationship, hence, no case of rape and abduction etc. is made out against the applicant. Therefore, it is prayed that the applicant be enlarged on bail.

3. On the other hand, learned counsel for the State opposes the bail application and the submission made in this respect. It is submitted that as per the school entry, the age of the prosecutrix on the date of incident was below 16 years, hence, the case is squarely covered under the provisions of POCSO Act. The prosecutrix being a minor on the date of incident, her consent or her submission to the applicant is immaterial, hence, no case is made out in favour of the applicant for grant of bail.
4. I have heard the learned counsel for both the parties and perused the case diary.
5. As per the contents of the case diary, the prosecutrix went missing on 15.09.2016. After passing of four days, a missing report was lodged by the mother of the prosecutrix. Prosecutrix was recovered on 25.02.2017, when she was presented before the police station by her mother. As per the statement, she was enticed away by the applicant and she stayed in Ahmadabad for five months with applicant during which applicant had sexual intercourse with her forcefully. The case has been investigated and charge-sheet has been filed.
6. Considering the submissions made and the contents of the case diary, particularly the evidence proposed to prove the case of the

prosecution and the medical report of the prosecutrix, this Court is of the opinion that present is a fit case, in which, the applicant should be enlarged on regular bail.

7. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed.
8. It is directed that applicant shall be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned trial Court, for his appearance as and when directed.
9. Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge