

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Criminal Case No.4535 of 2017**

- Kanhaiya Prasad S/o Subchan Prasad Aged About 20 Years R/o B E C Chowk Nahar Ke Kinare Near Puj Star Company Bhilai-3, Tehsil Patan, District Durg, Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through District Magistrate Durg, District Durg, Chhattisgarh.

---- Respondent

For Applicant	: Shri Avinash Chand Sahu, Advocate
For Respondent/State	: Shri Wasim Miyan, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****10.8.2017**

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.274/2013 registered in Police Station Bhilai-3, Distt. Durg (CG) for the offence punishable under Section 354 & 454 of the Indian Penal Code and under Sections 7 & 8 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 17.6.2017, after investigation, concerned police has filed charge sheet, which is pending before Judicial Magistrate First Class, Bhilai-3, Distt. Durg as Criminal Case

No.737/2013. Earlier Judicial Magistrate First Class, Bhilai-3 has granted bail to the applicant as there was allegation only under Section 354A & 454 of the IPC. Thereafter the charge sheet has been filed and provisions of Sections 7 & 8 of POCSO Act was also added along with other penal provisions and the applicant remained absent from 29.4.2014. Thereafter the trial Court issued non bailable warrant of arrest and ultimately the applicant was re-arrested on 17.6.2017. Since then he is in custody. He will not repeat any offence in future, 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 immediately after adding the provisions of POCSO Act in the charge sheet, the applicant remained absent and the matter is kept without any progress for more than three years. Looking to the facts, the bail application may be dismissed.

5. Perused the entire material.

6. Presently the applicant is in custody for one month and twenty three days, he has sufficiently tasted the post effect of his non appearance as directed to him under the law. He is the first offender, there is no material to show that he has involved in any other crime after the incident, but on account of his non appearance, the matter is still lying with Judicial Magistrate First Class, though the matter is triable by Special Court under the POCSO Act/Additional Session Judge (FTC) under the relevant provision of Section 33 of the POCSO Act and other provisions.

Upon consideration of the entire facts, I am inclined to grant one opportunity to the applicant so that he will now appear regularly and shall cooperate in the trial.

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

8. Judicial Magistrate First Class, Bhilai-3 Distt. Durg is directed to register Criminal MJC against the applicant and his surety under Section 446 of the CrPC for forfeiture realization of bond/surety amount. It is further directed to dispose of the same as expeditiously as possible after giving opportunity to the applicant and his surety and to pass appropriate orders if not done, at the earliest. Further directed to realize said forfeited bond/surety amount under the provisions of law. The trial Court is further directed that as the matter does not come under the jurisdictional authority of the said JMFC rather in the matter the Special Court designated under Section 28 of the POCSO Act authorised under Section 33 of the POCSO Act of 12 as the competent authority to take cognizance and to try the matter in accordance with law. With this, concerned JMFC, Bhilai-3 is directed to immediately forward the said charge sheet along with entire order sheet and papers to the concerned Special Court notified in the district of Durg to try the matter under the law. As the provisions of Section 209 CrPC is not applicable in the matter and the matter cannot be committed.

9. After forwarding the matter to the concerned Special Court, if the concerned Special Court consider the cognizance under Section 33 of the POCSO Act and after realization of the forfeiture under the law and surety thereafter if the applicant furnishes a personal bond in a sum of Rs.50,000/- with two separate solve sureties of Rs.25,000/- to the satisfaction of the concerned trial Court then only the applicant be released on bail during remaining part of the trial.

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. 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 directed to send a copy of the order to the concerned trial Judge for compliance and information.

Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE