

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Criminal Case No.4665 of 2017**

- Deepak Nag S/o Hari Ram Nag Aged About 25 Years (Wrongly Mentioned As Hare) R/o Village Kosmi Dhawdakot, Chowki Bakawand, Police Station Nagarnar, District Bastar Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through The Police Station Nagarnar District Bastar, Chhattisgarh.

---- Respondent

For Applicant	: Shri Pravin Tulsyan, Advocate
For Respondent/State	: Shri Neeraj Mehta, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****16.8.2017**

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.43/2017 registered in Police Station Nagarnar, Distt. Bastar (CG) for the offence punishable under Sections 354 of the Indian Penal Code and under Section 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 31.5.2017, after investigation, Police has filed charge sheet which is pending before Additional Sessions Judge (FTC)/Special Judge under POCSO Act, as Special Criminal POCSO No.16/2017 (wrongly mentioned as Special Sessions trial

No.16/17). Learned counsel for the applicant submits that the applicant is the first offender, he is in jail since long. As per the allegation, on 14.3.2017 at night, when the prosecutrix, aged about 17 years, came out of the house of her brother, where marriage celebration was going on, to throw some waste, suddenly the applicant came and caught hold her hands and used criminal force to outrage her modesty after pulling her towards kitchen garden. The applicant will not commit any offence in future, as the trial may take sometimes for its conclusion, he may be granted bail.

4. Per contra, learned counsel for the State opposed the arguments advanced on behalf of the applicant on the basis of the facts, but fairly submits that there is no criminal antecedent reported against the applicant.

5. Perused the entire material.

6. The applicant is in jail for two months and seventeen days, charge sheet has been filed, trial may take sometimes for its conclusion, he is aged about 25 years, first offender, looking to the entire facts surfaced, I am inclined to grant one last opportunity to the applicant so that he will not commit any 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.50,000/- with two separate solvent sureties of Rs. 25,000/- to the satisfaction of 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. 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.

11. Registrar (Judl.) is directed to send a copy of this order to the concerned trial Judge.

12. On perusal of the certified copy filed by the applicant showing presentation of the charge sheet before the trial judge and also the order passed in a bail petition filed by the applicant under Section 439 of CrPC, it appears that case number has been mentioned as Special Session Trial number whereas, the said matter is not committed under Section 209 of Cr.P.C. On the other hand, present matter has been straightaway filed before the Court of Special Judge having jurisdiction to try the case under the POCSO Act and having jurisdiction under Section 28 of the POCSO Act, and the said Court has taken cognizance under Section 33(1) of the POCSO Act , with this, the matter cannot be registered as Special Session trial Number because this matter is not committed by the Magistrate. As the present matter is a special Criminal Case under the POCSO Act, the concerned trial Court is directed to correct the nomenclature of the matter and not to repeat the said mistake again.

13. District and Sessions Judge Bastar is also directed to take care that Judges working under his supervision as a Sessions Judge may register relevant matters under the correct head as per law.

14. A copy of this order be sent to concerned District and Sessions Judge for information and compliance.

Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE