

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Criminal Case No.4747 of 2017**

- Purushottam Yadav S/o Shri Punau Yadav, aged about- 19 years, R/o Village-Jildi, P.S.- & Tah. Sarangarh, Distt.- Raigarh, Civil and Revenue Distt.-Raigarh (C.G.).

---- Applicant

Versus

- State of Chhattisgarh Through : AJK, Raigarh, Distt.-Raigarh (C.G.).

---- Respondent

For Applicant	: Shri M. K. Sinha, Advocate
For Respondent/State	: Shri Anant Bajpai, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****17.8.2017**

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.239/17 registered in Police Station -AJK, Distt.- Raigarh (CG) for the offence punishable under Section 354, 354-D (1) (i) of IPC & Section 8 of the Protection of Children from Sexual Offences Act, 2012 (in brevity 'POCSO Act') and Section 3 (1) (w) (i) and Section 3 (2)(v) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 (In brevity 'SCST Act').

3. Learned counsel for the applicant submits that the applicant has been arrested, investigation is not yet concluded, applicant is remanded by Judicial Magistrate First Class, Sarangarh Distt.-

Raigarh (C.G.). Learned counsel for the applicant would submit that applicant is the first offender aged about 19 years and has no criminal antecedents and as per allegation when the prosecutrix, aged about 12 years, was standing in a public place along with her colleague, the applicant has used criminal force to outrage her modesty and pressed the breast of the prosecutrix. He will not commit any offence in future if granted regular bail. He may be granted bail as the trial may take time for its final disposal.

4. Per contra, learned counsel for the State opposes the arguments advanced on behalf the applicant and would submit that prosecutrix in her statement recorded under Section 161 & 164 of Cr.P.C. supported the case of the prosecution. Looking to the act of the applicant that he committed the aforesaid offences within the public view and the incident is witnessed by few eyewitnesses and the age of the prosecutrix, the instant M.Cr.C. may be dismissed.

5. Perused the entire material.

6. As the applicant is in custody since 1 month and 21 days, till date; applicant is aged about 19 years; charge sheet is not yet filed; the trial may take sometime for its conclusion; and on consideration of entire facts as the applicant is the first offender and no earlier criminal antecedent has been shown in the case diary, I am inclined to grant one opportunity to the applicant, so that he shall not involve himself in any of the crime and shall remain peaceful 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 his furnishing a personal bond in the sum of Rs.50,000/- with two solvent sureties of Rs. 25,000/- each to the satisfaction of Committal Court/Trial Court 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. The applicant is further directed to appear before the concerned SHO/IO/in-charge of the Police Station Aajak, Distt.-Raigarh on **every 1st and 3rd Monday at 11 am** of every month positively till trial. If the applicant fails to do so, concerned police may intimate the trial Court and if the trial Court held that the applicant remains absent without any cogent and proper reason as directed, the bail granted to applicant shall stand cancelled by the trial Court without further reference to the bench under intimation. If bail is cancelled automatically in view of above, the Court below may proceed further under the provisions of law under intimation.

11. In addition, the applicant is directed not to communicate/contact in any manner with the prosecutrix and family members 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. During hearing of instant M.Cr.C, it appears that the concerned Special Judge Raigarh (C.G.) under SCST Act has passed the order dated 28. 06.2017 in a bail petition filed by the applicant mentioning the different provision of SCST Act as Section 3 (1) (ब), Section 3 (2) (5). On perusal of the entire Act I do not find any provision as aforementioned quoted by the learned Special Judge. It is further to quote that SCST Act is duly amended accordingly by the Schedule Castes and the Schedule Tribes (Prevention of Atrocities) Amendment Act, 2015 No. 01/16. The said amendment is in force. With this the correct legal provision attracted in the present matter *prima facie* may be Section 3 (1) (w)(i), Section 3 (2) (v) of SCST Act. Probably it appears that as the appropriate provisions are not verified from any quality publications, this mistake had taken place. It is expected from a Judge to quote the appropriate Section in force at the relevant point of time. The Court below is directed not to repeat this mistake again and to mention the correct provisions of law in his order. Copy of the Order be sent to the

concerned Court below for compliance and future guidance. Copy of the Order also be sent to District and Sessions Judge, Raigarh (C.G.) with a direction to see that the Judges' working at District Raigarh be directed to quote the Correct provisions of law and also to quote the correct nomenclature regarding any matter under the provisions of Law and Rules.

Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE