

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Criminal Case No.4708 of 2017**

- Ramkhilawan Koshle S/o Somlu Koshle Aged About 18 Years R/o Vilalge Bhaisahal, Near Kariyadama Chowk Kharora Police-Station Kharora, & District- Raipur, Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through Its Police Station Kharora Civil & Revenue District- Raipur, Chhattisgarh.

---- Respondent

For Applicant	: Shri BL Sahu, Advocate
For Respondent/State	: Shri Arvind Shukla, 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.88/2017 registered in Police Station Kharora, Distt. Raipur for the offence punishable under Section 363, 366 & 376 of the Indian Penal Code and under Section 3 & 4 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 17.4.2017, after investigation police has filed charge sheet which is pending before 9th Additional Sessions Judge (FTC)/Special Judge under POCSO Act, Raipur as Special

Criminal Case (POCSO) No.129/17. Learned counsel for the applicant submits that this is a case of consent. The applicant is also aged about 19 years, the prosecutrix of her own came in the company of the applicant, the applicant is innocent, as the trial may take some time 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 and would submit that as per the material collected in the charge sheet, date of birth of the prosecutrix is 04.10.2000 and the date of incident is 04.4.2017, with this at the time of the incident, the prosecutrix was aged about 16 years and 6 months. As she was a child within the meaning of Section 2(1)d of the POCSO Act, consent even if it is admitted, may not be a legal basis for the entire act.

5. Perused the entire material.

6. On due consideration of the material collected in the charge sheet, I am not inclined to grant bail to the applicant.

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

8. A perusal of the copy of the bail order passed by the trial judge dated 20.6.2017, it appears that case number is mentioned as Session Trial No.129/17. As per the settled law, the matter being a Special Criminal Case cannot be committed under the relevant provisions of Section 209 of CrPC and as the concerned trial Court is empowered under Section 28 of the POCSO Act may take cognizance of any offence under Section 33 of the POCSO

Act. With this the matter shall be registered as Special Criminal POCSO Number and not as session trial number. The trial Judge is directed to correct the nomenclature of the matter. Sessions Judge, Raipur is further directed to make aware to all the judges working under his supervision and subordination in Raipur District to register the matter under the head which is applicable.

9. A copy of the order be sent to the trial judge for information and compliance and also to all the sessions Judges of Raipur district for future guidance.

Sd/-

(Chandra Bhushan Bajpai)

JUDGE