

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MCRC No. 4865 of 2017**

- Rambahu Singh Paraste S/o Ram Singh, Aged About 19 Years, R/o Village Charvahi, Thana Kelhari, District Koriya Chhattisgarh.

**---- Applicant**

**Versus**

- State Of Chhattisgarh through Police Station Kelhari, District Koriya Chhattisgarh

**---- Non-applicant**

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For Applicant – Shri Parag Kotecha, Advocate.

For Non-applicant/State – Shri Wasim Miyan, Panel Lawyer.

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**Hon'ble Shri Justice Chandra Bhushan Bajpai**

**Order on Board**

**23-08-2017**

1. Heard the matter finally.
2. Learned counsel for the applicant would submit that the applicant held arrested in connection with Crime No.24/17 on 02-5-2017 by P.S. Kelhari, District Koriya, Chhattisgarh for the offence under Section 456, 354, 354A of the IPC and Section 8 of Protection of Children from Sexual Offences Act, 2012 (in short 'the POCSO Act'). After investigation police had filed the charge sheet, which is pending before the Additional Sessions Judge Manendragarh, Distt. Koriya, C.G. as Sessions Trial No.15/17. Learned counsel for the applicant would further submit that the applicant is aged about 19 years. He is first offender, he is in custody since long, charge sheet has been filed, trial may take some time and as per the allegation, at about 3.00 a.m. the applicant entered in the room where the prosecutrix aged about 15 years was sleeping and thereafter the applicant to outrage the modesty committed obscene act, with this, the prosecutrix arose and shouted for help, then the applicant ran away from the room. Thereafter, the matter was reported to the police. The applicant will not commit any offence in future. He may be granted bail during

trial.

3. Per contra, learned counsel for the non-applicant/State opposed the argument advanced on behalf of the applicant on the basis of the entire facts surfaced, though fairly conceded that there is no any criminal antecedent of the applicant.

4. Perused the entire material.

5. As the applicant is in custody since 3 months and 21 days till date, charge sheet has been filed, trial may take some time, the applicant is aged about 19 years, he is first offender with no criminal antecedent, on consideration of the entire facts, I am inclined to grant one last opportunity to the applicant so that he shall not involve himself in any offence and shall live peacefully in society. Consequently, the instant MCRC is hereby allowed. The applicant is directed to 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 the trial Judge for his appearance before the said Court as and when directed till trial.

6. 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 above, the Court below may proceed further under the provisions of law under intimation.

7. In addition, the applicant is directed not to communicate/contact in any of the manner with the prosecutrix, her family members and the witnesses cited in the charge sheet or attempt to ask for any favour in the trial. If so, the

prosecutrix, her family members and the witnesses may report the said act to the trial Judge and if the trial Judge finds that in any way the applicant gave pressure or any attempt for any illegal favour in the trial or otherwise directly or indirectly, 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.

8. After perusal of the certified copy of the order sheet of Sessions Trial No.15/17 whereby the order dated 3-07-2017 has been passed by the trial Court, it appears that the matter has been registered as Sessions Trial case. In the present matter Section 28(1) along with proviso and Section 33(1) of the POCSO Act is attracted. Here Section 28 sub-section (1) along with proviso and Section 33 sub-section (1) of the POCSO Act are quoted below :-

***“Section 28 Designation of Special Courts : (1) For the purposes of providing a speedy trial, the State Government shall in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, designate for each district, a Court of Session to be a Special Court to try the offences under the Act:***

***Provided that if a Court of Session is notified as a children’s court under the Commissions for Protection of Child Rights Act, 2005 or a Special Court designated for similar purposes under any other law for the time being in force, then, such court shall be deemed to be a Special Court under this section.***

***Section 33.Procedure and powers of Special Court : (1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.”***

From perusal of the above provisions, it appears that the trial Court shall be the Special Court, not the Court of Sessions as the matter is not being tried by the Sessions Court and cannot be registered as Sessions Trial, also the matter is not committed under Section 209 Cr.P.C., on the other hand, charge sheet is filed directly to the trial Judge under the provision of Section 33(1) of the POCSO Act, the matter shall be registered as Special Criminal Case under Protection of Children from Sexual Offences Act, 2012, not as Sessions Trial. With the above, the trial Court is directed to correct the nomenclature regarding

registration of the matter immediately and not to repeat this grave mistake in future.

9. It is also perused that the trial Judge had not written the correct designation of the trial Court below his signature. In the present matter the trial Judge is mentioned her designation as First Additional Sessions Judge Manendragarh, District Koriya, C.G., whereas, any Additional Sessions Judge unless notified as Special Court under the provision of Section 28(1) cannot try the cases under the POCSO Act. With this, if the Judge concerned is duly notified, he/she shall write his/her designation as Additional Sessions Judge/ Special Judge under the POCSO Act.

10. Copy of this order be sent to the trial Court for compliance, information and future guidance.

11. Copy of the order be also sent to the District and Sessions Judge Koriya, C.G. to ensure that Judges working in the District shall register matter in accordance with law not arbitrarily.

12. Certified copy as per rules.

Sd/-  
**(Chandra Bhushan Bajpai)**  
**Judge**