

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 4810 of 2017**

Sanjay Gaura S/o Roopraj Gaura, Aged About 27 Years Caste
Ghasiya, R/o Keshavnagar, Mahadevpara, Police Station Bishrampur,
District Surajpur, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through The Station House Officer, Police
Station Vishrampur, District Surajpur, Chhattisgarh.

---- Respondent

For applicant	Mr. Jitendra Shrivastava, Adv.
For Respondent/State	Mr. Neeraj Jain, GA

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****23/8/2017**

1. Heard finally.
2. The applicant has preferred this application for grant of bail as he is arrested on 16-5-2017 in connection with Crime No. 102/2017 registered in PS Vishrampur, Distt. Surajpur for offence punishable under Section 454, 354A and 506 of the Indian Penal Code 1860 and Section 8 of the Protection of Children from Sexual Offences Act, 2012 (in brevity 'POCSO Act').
3. Learned counsel for the applicant submits that after investigation charge sheet has been filed and the matter is pending before the Additional Sessions Judge (FTC), Surajpur as Sessions Trial No. 16/2017. As per allegation, on 8-5-2017 when prosecutrix aged about 13 years was taking bath at about 1 PM in the bathroom of Suresh Kumar situated in the kitchen garden, the neighbour i.e. the applicant came inside and touched the body of the prosecutrix. With this he sexually harassed and outraged the modesty of the prosecutrix thereafter the prosecutrix left the

bathroom and returned to her home. Thereafter the prosecutrix and the family members were threatened to take life if the matter is reported to the police. He is the first offender. He will not commit any offence in future if granted bail. He may be granted bail as the trial may take time.

4. Per contra, learned State counsel opposes the bail application on the basis of entire facts though fairly concedes that police has not reported any criminal antecedent of the applicant in the case diary.
5. Perused the matter.
6. On due consideration, as the applicant is in jail since 3 months and 7 days till date, charge sheet has been filed, he is aged about 27 years, he is first offender, trial may take some time, on consideration of the entire facts, I am inclined to grant one opportunity to the applicant to live peacefully in the society without committing any crime. Consequently, instant MCRC is 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 each of Rs. 25,000/- to the satisfaction of the trial Court for his appearance before the said Court regularly as and when directed by the said Court.
7. 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: (iv) the trial Court finds that the applicant remains absent without any sufficient and cogent reason. The applicant is further directed to appear before the concerned SHO/IO/in-charge of the Police Station Vishrampur Distt. Surajpur on every 1st and 3rd Monday at 11 am 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.

8. In addition, the applicant is directed not to communicate / contact in any manner with the prosecutrix, her family members and the witnesses cited in the charge sheet and any other person concerned or attempt to ask for any favour in the trial directly or indirectly. 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 after hearing that in any way the applicant directly or indirectly gave pressure for illegal favour in the trial or other wise, the bail granted to the applicant shall be cancelled without further reference to the bench and the concerned trial Court may take the applicant in custody including other measures as provided under the law.
9. Registrar (Judicial) is directed to provide a copy of the order to the non-applicant/State for placing it with the case diary to be

returned to the concerned police for compliance and information.

10. On perusal of the copy of the order passed by the trial Court dated 27-6-2017, it appears that the matter is registered under the head – Session trial. Here Section 28 sub-section (1) along with proviso and Section 33 sub-section (1) of the POCSO Act are relevant and 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.”

11. From perusal of the entire matter as the matter is not a session trial and never committed under the relevant provisions of Section 209 or any of the provisions of Code of Criminal Procedure, with this, the matter cannot be registered under the head- Session trial and as per provisions of law as the charge sheet is directly filed before the Special Court without any committal, the matter should have been registered under the head- Special Criminal Case under the POCSO Act as the Court where the charge sheet is filed is the special court under the POCSO Act who had taken cognizance and trying the matter in accordance with law. With this, the trial Court is directed not to commit this mistake again in future and to correct the nomenclature of the matter as Special Criminal Case under the

POCSO Act forthwith.

12. On perusal of the impugned order dated 27-6-2017 passed by the trial Court, it appears that identity of the prosecutrix was disclosed by writing her name. In the matter, provisions of Section 33 sub-section (7) of the POCSO Act are attracted which is reproduced below for relevance :-

“33. Procedure and powers of Special Court : (7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial:

Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child.”

13. In view of the above provisions, the Legislature casts a duty over the special courts to ensure not to disclose the identity of the child i.e. the prosecutrix under the relevant provisions of Section 2 sub-section (1)(d) of the POCSO Act. In the present matter, the trial court himself violated the provisions of law by disclosing the identity of the child by writing her name. The trial Court is further directed not to repeat this mistake in future by disclosing the name of the child in any way in accordance with law.
14. Copy of the order be sent to the trial Judge for information, compliance and future guidance.
15. Copy of the order be also sent to the Distt. and Sessions Judge, Surajpur to ensure compliance of provisions of law by the Judges posted in the district, also to ensure that the matter is registered in the appropriate head as required under the law.
16. Copy of the order be also sent to the Registered General to re-issue a circular to all the judicial officers working in the

State after taking appropriate permission from the authority concerned to ensure compliance of the provisions of law and to register the matter under the relevant head under the law and not arbitrarily.

17. C.C. as per rules.

Sd/-
(Chandra Bhushan Bajpai)
Judge

Pathak