

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 4839 of 2017**

Balrampuri Goswami S/o Rudreshwarpuri Goswami, Aged About 28 Years R/o Ratnabandha, Near Durga Mandir, Dhamtari, Police Station Dhamtari, District Dhamtari, Chhattisgarh.

---- Applicant**Versus**

State Of Chhattisgarh Through Station House Officer, Police of Police Station City Kotwali, Dhamtari, District Dhamtari, Chhattisgarh.

---- Respondent

For applicant	Mr. Anil Gulati, Adv.
For Respondent/State	Mr. U.K.S. Chandel, PL.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****21-8-2017**

1. Heard finally.
2. The applicant has preferred this application for grant of bail as he is arrested on 25-4-2017 in connection with Crime No. 146/2017 registered in PS City Kotwali, Dhamtari, Distt. Dhamtari (CG) for offence punishable under Section 419, 354D, 509B of the Indian Penal Code, 1860 (in brevity 'IPC'), Section 66D and 67A of the Information and Technology Act, 2000 (in brevity 'IT Act') and Section 12 of the Protection of Children from Sexual offences Act, 2012 (in brevity 'POCSO Act').
3. Learned counsel for the applicant submits that after investigation, police has filed charge sheet directly to the court of Special Judge under the POCSO Act/Additional Sessions Judge (FTC), Dhamtari, CG which is presently pending as Special Sessions Trial No. 156/2017 (Correct nomenclature will be

Special Criminal case under the POCSO Act No. 156/2017.

4. Learned counsel for the applicant submits that the trial Court has framed charges against the applicant under Section 354D, 509B of IPC, Section 67 of the IT Act, Section 12 of the POCSO Act on 5-7-2017. The applicant is the first offender. He will not commit any offence in future. He submits that he opened a fake facebook account of the prosecutrix (name not mentioned) and also posted obscene photo of the prosecutrix, he attempted to contact the prosecutrix despite clear indication of disinterest by the prosecutrix, with the object that the prosecutrix and other may see the said obscene photo of the prosecutrix thereby trespassed the privacy of the prosecutrix and with the above, sexually harassed the prosecutrix. He will not commit any offence in future hence he may be granted bail during trial.
5. Per contra, learned counsel for the respondent/State opposes the arguments advanced on behalf of the applicant and submits that act of the applicant is of serious nature, taken seriously by the legislature. With this, the instant MCRC may be dismissed, though he fairly concedes that there is no criminal past of the applicant.
6. Perused the entire matter.
7. As the applicant is in custody since 3 months and 26 days till date, he is first offender, charges have been framed, trial may take some time, the applicant is aged about 28 years, though the prosecutrix involved in the matter is a child under Section 2 sub-section (1)(d) of the POCSO Act and entire act of the applicant is serious in nature but looking to the entire facts, period of

detention, I am inclined to grant last 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. 1,00,000/- with two solvent sureties each of Rs. 50,000/- to the satisfaction of the trial Judge for his appearance before the said Court regularly as and when directed by the said Court.

8. 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 City Kotwali, Dhamtari, Distt. Dhamtari (CG) 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 holds 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.

9. 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 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.

10. On perusal of the copy of the charge sheet, it appears that the matter is registered before the trial Court as Special Sessions Trial No. 156/2017. Here provisions of Section 28 sub-section (1) and Section 33 sub-section (1) of the POCSO Act are relevant and reproduced below for ready reference :-

“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 above and also keeping in mind that the

Court authorized to try the cases is not the court of sessions, on the other hand, said court is a special court to try offence under the act and as the charge sheet is filed directly without being committed under Section 209 of the Cr.P.C, the matter cannot be a session trial/Special Sessions trial. The above two nomenclature could be used for any judge who is trying the matter as a sessions judge or special sessions judge. In the present matter, the trial judge is neither the sessions judge nor the special sessions judge, though the criteria for the notification of the said special court is that he shall be the court of sessions but immediately after the notification to try the matters under the POCSO Act, the nomenclature of sessions judge is applicable only for the provisions of Indian Penal Code. With this, in the entirety of the matter, the trial judge shall be special Judge under the POCSO Act and with this the matter has to be registered as special criminal case under the POCSO Act, not a the sessions trial/special sessions trial. The concerned trial Judge is directed to immediately correct the said nomenclature and shall record the matter as a special criminal case under the POCSO Act. Further it is surfaced that while framing the charges, the concerned trial Judge in all the 4 charges mentioned the name of the prosecutrix. Hear Section 33 sub-section (7) of the POCSO Act is relevant which is reproduced for ready reference:-

“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.”

- From perusal of the said provisions, it is the duty of the special court to ensure that the identity of the child is not disclosed at any time during the course of the investigation or trial, on the other hand, learned trial Judge in the charges on 4 occasions disclosed the identity of the child which is against the law. Also under the requirement of the law, any judge is not required to disclose the identity even in the judgment, order or any of the proceedings. To honour the legislature this Court is also not disclosing the identity of the prosecutrix. Trial Judge is directed not to repeat this grave mistake again in any of the trial or proceedings before him.

12. Registrar General is directed to circulate copy of the order to all the Special Judges under the POCSO Act to comply and follow the directions of this Court and the legislature immediately.

13. Registrar (Judicial) is directed to send a copy of this order to the concerned trial Judge and also 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.

14. CC as per rules.

Sd/-
(Chandra Bhushan Bajpai)
Judge