

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 4822 of 2017

- Indal Guleri S/o Sukritram @ Chutaiya Guleri, Aged About 19 Years, R/o Village Risda, Tahsil & Police Station Masturi, District Bilaspur, Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through it's Police Station Masturi, Civil & Revenue District Bilaspur, Chhattisgarh.

---- Non-applicant

And

MCRC No. 5351 of 2017

- Amarbabu Banjare S/o Saheblal Banjare, Aged About 21 Years, R/o Village Risda P.S. Masturi District Bilaspur, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through P.S. Masturi District Bilaspur, Chhattisgarh

---- Non-applicant

For Applicant – Shri Ravi Maheshwari, Advocate (in MCRC No.4822/2017).
Shri Amit Kumar, Advocate (in MCRC No.5351/2017).
For Non-applicant/State – Shri Vinod Tekam, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

04-09-2017

1. As MCRC No.4822/2017 and MCRC No.5351/2017 arise out of the same crime number and incident, both are being disposed of by this common order.
2. Heard the matter finally.
3. Learned counsel for the applicants would submit that applicant Indal Guleri is arrested on 04-05-2017 and applicant Amarbabu Banjare is arrested on 14-06-2017 in connection with Crime No.173/2017 by P.S. Masturi, District Bilaspur, Chhattisgarh for the offence under Section 454, 354/34 of the IPC and under Section 8 of the 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 IIIrd Additional Sessions Judge /Special

Judge under the POCSO Act Bilaspur C.G. as Special Criminal Case (POCSO) No.45/2017 (wrongly mentioned as Special Sessions Trial No.45/2017). Both the applicants are aged about 19 years and 21 years, they are first offender. They are in custody since long. They will not commit any offence in future. They may be granted bail during trial.

4. Per contra, learned counsel for the non-applicant/State opposed the argument advanced on behalf of the applicants and would submit that on 03-05-2017 as the prosecutrix was sleeping inside the house. At that time her brothers were near the gate. At about 2.30 p.m. applicant Indal Guleri trespassed and held the hands of the prosecutrix to outrage the modesty and also said that she will keep the door open during night and if not he will enter by breaking the door, also demanded for sexual favour. Applicant Amarbabu Banjare was standing near the gate to guard applicant Indal Guleri. Looking to the entire facts available, both the MCRC may be dismissed.

5. Perused the entire material.

6. As both the applicants are in custody since 4 months and 2 months, 20 days respectively till date, charge sheet has been filed, the applicants are aged about 19 and 21 years, trial may take some time, no any criminal antecedent is reported for the applicants, though the allegations against the applicants are serious in nature, but after consideration upon their age, period of detention and other facts, I am inclined to grant one opportunity to the applicants so that they shall not involve themselves in any offence and shall live peacefully in society. Consequently, the instant MCRC are hereby allowed. The applicants are directed to be released on bail on each of them 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 Special Judge under the POCSO Act Bilaspur, C.G. for their appearance before the said Court as and when directed till trial.

7. It is made clear that this order granting bail to the applicants shall stand cancelled automatically without reference to the Bench by the Court below if (i)

the trial Court finds that the applicants suppressed filing or pendency of any other application for grant of bail before this Court or the Hon'ble Apex Court intentionally; (ii) the applicants do not cooperate in the trial; (iii) the applicants are found to be involved in any offence of the like nature; and (iv) the trial Court finds that the applicants remain 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.

8. It is further directed that till conclusion of the trial the applicants shall appear in person before the IO/SHO/In-charge, as the case may be, of P.S. Masturi, District Bilaspur, C.G. in 1st and 3rd Monday of every month at 11.00 a.m. sharp. If the applicants failed to mark their appearance before the concerned police as directed, the police may inform the trial Court for the same and if the trial Court appreciates that the applicants were not present before the concerned police for no any sufficient or cogent reason, the bail granted to the applicants shall stand cancelled by the trial Court without further reference to the Bench.

9. 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.

10. In addition, the applicants are 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 applicants gave pressure or any attempt for any illegal favour in the trial or otherwise directly or indirectly, the bail granted to the applicants shall be cancelled without further reference to the Bench and the concerned trial Court shall take the applicants in custody including other measures as provided under the law.

11. On perusal of the order passed by the trial Court dated 29-06-2017, it appears that the trial Judge has mentioned the matter as Special Sessions Trial No.45/2017. From perusal of the relevant provisions attracted for the matter and as the charge sheet has been filed also under Section 8 of the POCSO Act, as per settled provision of law, only a Special Court duly empowered under Section 28 of the POCSO Act may take cognizance of the offence under Section 33(1) of the POCSO Act without the accused being committed to it for trial under Section 209 of the Cr.P.C. With this, if the Judge concerned having jurisdiction is a Special Judge and the Court is Special Court as defined, as the said Court is hearing the matter as Special Court under Section 28 and 33 of the POCSO Act and as the matter is not a Sessions Trial, not committed under Section 209 of the Cr.P.C., the matter cannot be registered as Special Sessions Trial, on the other hand, it has to be registered as Special Criminal Case (Protection of Children from Sexual Offences Act, 2012). With this, learned trial Court is directed to correct the nomenclature immediately and also directed not to repeat this type of grave error in future. The Judge is required to register the matter under the relevant head provided under the law.

12. Copy of this order be sent to the trial Judge for compliance and future guidance. Copy of the order be also sent to the District & Sessions Judge Bilaspur, C.G. to ensure that the judges working within jurisdiction be cautious for registering the matter under the appropriate head.

13. With these directions, both the MCRC disposed of.

14. Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
Judge