

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 5760 of 2017**

- Rakesh Kumar Kushwaha S/o Late Chandrika Prasad, Aged About 28 Years, R/o Sontarai, Police Station Sitapur, District Surguja, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Police Station Sitapur, Ambikapur, District Surguja, Chhattisgarh

---- Non-applicant

For applicant	Shri Manoj Paranjpe, Advocate.
For Non-applicant/State	Shri Arvind Shukla, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order On Board

25-9-2017

1. Heard finally.
2. The applicant has preferred this application for grant of bail as he has surrendered and is arrested on 01-8-2017 in connection with Crime No.188/2016 registered in PS Sitapur, Distt. Surguja (CG) for offence punishable under Section 354/34 of the IPC, Section 9(c)(f) of the Protection of Children from Sexual Offences Act, 2012 (in brevity 'Act of 2012'), Section 3 sub-section (1)(w)(i) and (ii), Section 3 sub-section (2)(vii) of the Scheduled Castes and Scheduled Tribes Act, 1989 (in brevity 'SCST Act').
3. Learned counsel for the applicant submits that after investigation police had filed the charge sheet against the present applicant and co-accused Indramani Yadav and the same is pending before the Special Judge under SCST Act, Surguja at Ambikapur as Special Sessions Trial No. 47/2017. The charge sheet has been filed showing the present applicant absconding and after arrest of Indramani Yadav, thereafter the present applicant surrendered before the trial Court on 1st of August, 2017. This Court granted bail to co-accused Indramani Yadav in MCRC No.4338/2017 vide order dated 19-09-2017. Case of

the present applicant is also similar to Indramani Yadav. There is no any criminal antecedent of the applicant. The applicant will not commit any offence in future and as per the allegation, after the incident with co-prosecutrix, the present applicant asked the prosecutrix to bring chair from the staff room, when the prosecutrix (name not mentioned) who is studying in the school wherein the present applicant and co-accused were working as teacher, entered the staff room the present applicant also followed her and kept his hand over her shoulder, talk to her and attempted to caught her, the prosecutrix resisted and came out from the place of incident spontaneously. Learned counsel for the applicant would further submit that except this nothing more is surfaced in the statement of the prosecutrix recorded under Section 161, 164 of the Cr.P.C. The applicant is in custody since 1 month and 25 days till date. He has been suspended from service by his superior official and his headquarter is fixed at office of Block Education Officer Lakhanpur, District Surguja, C.G. Till date the applicant is under suspension and his suspension is not revoked. With this, there is no possibility to come into contact of the prosecutrix who is student of Govt. School Manjhipara, Block Mainpat, District Surguja. He will not commit any offence in future. He may be granted bail during trial.

4. Per contra, learned State counsel opposes the arguments advanced on behalf of the applicant and submits that as the applicant was the public servant and also a staff of educational institution and attempted the act as surfaced and co-accused also committed an incident with another co-prosecutrix, hence looking to the entire act committed by the present applicant and the co-accused in a row, the instant MCRC may be dismissed.
5. Perused the entire matter.
6. As the applicant is first offender, he had never involved in any crime prior to the incident, he is in custody since 1 month and 25 days till

date, with this he has tasted the post effect of the incident reported, and also as submitted he has been suspended from service, his headquarter is fixed in the office of Block Education Officer, Lakhanpur, Distt. Surguja, C.G., with this there is remote possibility to go to the institution where the applicant was working at the time of incident, and also the co-accused has been granted bail, the case of the present applicant is similar to the co-accused, as per the facts surfaced, the applicant lay his hand over the shoulder of the prosecutrix and attempted to caught her, immediately thereafter the prosecutrix resisted and came out, and as there was no any further attempt for any of the act, on consideration of 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. 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.

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.
8. The applicant is further directed to appear before the concerned SHO/IO /in-charge of the Police Station Sitapur, Distt. Sarguja on 1st and 3rd Monday of every month 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.

9. In addition, the applicant is directed not to communicate / contact in any manner with the prosecutrix, co-prosecutrix, their family members and the witnesses cited in the charge sheet and or attempt to ask for any favour in the trial directly or indirectly. If so, they 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. If the applicant in any way attempts to enter into said Govt. Middle School, Manjhipara, Block Mainpat, Distt Sarguja where the prosecutrix and the co-prosecutrix are studying and where the incident as alleged committed, any person may bring this fact to the knowledge of the trial Court and if it is found that the applicant entered into the said school premises, the bail granted by this Court shall automatically cancelled by the concerned trial Judge without any reference to the Bench under intimation and the trial Court may take the applicant in custody along with other procedural proceedings.
11. Addl. 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.

12. Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
Judge

Aadil