

Misc. Criminal Case No.5928 of 2017

- **Applicant**

---- Respondent

For Applicants : Shri VR Tiwari and Shri Chitendra Singh, Advocate
For Respondent/State : Shri Sumit Jhawar, Panel Lawyer

11.10.2017

Heard the matter finally.

2. This is an application filed under Section 439 of the Cr.P.C. for grant of regular bail to the applicant, who has been arrested in connection with Crime No.43/2017 registered in Police Station Kusmi, Distt. Balrampur (CG) for the offence punishable under Section 376(2)(n) of the Indian Penal Code.
3. Learned counsel for the applicant submits that the applicant has been arrested on 08.6.2017, after investigation, police has filed charge sheet against the applicant which is ultimately committed to the Court of Session presently pending before Additional Sessions Judge, Ramanujganj, Civil District Surguja at Ambikapur as Session Trial No.44/2017. Learned counsel for the applicant would submit that age of the prosecutrix is 27 years, if at all there was any physical relation between the applicant and the prosecutrix, the same was

with the consent of the prosecutrix and as per the actual facts the applicant wanted to marry with the prosecutrix but the family members of the prosecutrix wanted the applicant to live along with the prosecutrix in her parental house after marriage. As the trial may take some time for its conclusion, he may be granted bail.

4. Per contra, learned counsel for the respondent/State opposed the arguments advanced on behalf of the applicant and would submit that in the statement of the prosecutrix recorded under Sections 161 & 164 of the CrPC, it is surfaced that it is not a case of consent, forcible intercourse has been committed with the prosecutrix, hence, instant bail application may be dismissed.

5. Perused the entire material.

6. After perusal of the statement of the prosecutrix recorded under Sections 161 & 164 of CrPC, it cannot be prima facie a case of consent. On the other hand, there is material showing the commission of offence forcefully. On due consideration, I am not inclined to grant bail to the applicant.

7. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is hereby dismissed.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE