

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 5994 of 2017

- Sanjay Dewangan @ Sanju S/o Shri Dhurchand Dewangan, Aged About 23 Years, R/o Gabharapara, in front of Government School, Police Station Tikrapara , Tahsil & District Raipur Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Tikrapara Raipur District Raipur Chhattisgarh.

... Non-applicant

For Applicant	:	Shri Manoj Kumar Dube, Advocate.
For Non-applicant/State	:	Shri Ashok Swarnkar, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

11-10-2017

1. Heard the matter finally.
2. Learned counsel for the applicant would submit that the applicant held arrested in connection with Crime No.432/2017 on 22/08/2017 by P.S. Tikrapara Raipur District Raipur, Chhattisgarh for the offence under Section 354 of the IPC and Section 7, 8 of Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act'). After investigation police had filed the charge sheet, which is presently pending before the 7th Additional Sessions Judge (FTC)/Special Judge under the POCSO Act Raipur, C.G. as Special Criminal Case (POCSO) No. 256/2017. Learned counsel for the applicant would further submit that the prosecutrix is daughter of his tenant, there is some dispute between the landlord and the tenant for vacating the rented premises. As per the FIR lodged by the prosecutrix herself, the date of incident is 14-06-2017 and as per the facts surfaced she was admitted as in-door patient in the hospital for 5 days only even then the matter is reported to the police on 22-08-2017 when the FIR was lodged on the basis written complaint, and in the FIR the reason for

delay in reporting is mentioned as she was under treatment, but the medical papers annexed in the charge sheet does not show that what type of treatment given to the prosecutrix after her discharge so as to prevent her to lodge the report. There is no any fact whether the prosecutrix or her family members were so frightened and not in a position to lodge FIR immediately after discharge of the prosecutrix, and also as per the facts, after the incident she allegedly consumed bathroom cleaner liquid and vomited, thereafter with this, there is no any danger to life as per the medical papers and nothing to demonstrate which prevented even the family members to lodge the report before police. Learned counsel for the applicant would further submit that as per the written complaint, the prosecutrix was subjected to criminal force by holding her hand and arm. Thereafter in the statement recorded under Section 164 of the Cr.P.C. it is mentioned that the applicant have touched her waist pulled her and also pressed her breast and also gave threat to take life, these facts are improvement as not in the written complaint reported to the police as FIR. The applicant is first offender, he is in custody since one month 19 days till date. He will not commit any offence in future. Charge sheet has been filed, trial may take some time. He may be enlarged on bail.

3. Per contra, learned counsel for the non-applicant/State opposed the argument advanced on behalf of the applicant and would submit that cause of delay is mentioned in the FIR as the prosecutrix was under treatment, she had lodged the FIR after two months and 8 days. Looking to the facts surfaced for the criminal assault to outrage the modesty to the prosecutrix, the instant MCRC may be dismissed.

4. Perused the entire material.

5. As the applicant is in custody since 1 month and 19 days till date, charge sheet has been filed, trial may take some time, the applicant is first offender, never reported for any of the offences against the prosecutrix or anybody, also

prima facie there is unexplained delay on the basis of facts surfaced, submitted on behalf of the applicant though that is subject matter of the trial, also there are prima facie improvement of material facts when we examine the written complaint, FIR, statement under Section 161, statement under Section 164 of the Cr.P.C. together, after consideration of the entire facts, I am inclined to grant one opportunity to the applicant so that he shall not involve himself in any offence and shall live peacefully in society. Consequently, the instant MCRC is hereby 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 of Rs.25,000/- each to the satisfaction of the trial Judge for his appearance before the said Court as and when directed till trial.

6. 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; and (iv) the trial Court finds that the applicant remains 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.

7. In addition, the applicant is directed to 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 applicant gave pressure or any attempt for any illegal favour in the trial or otherwise directly or indirectly, the bail granted to the applicant shall be cancelled without further reference to

the Bench and the concerned trial Court shall take the applicant in custody including other measures as provided under the law.

8. Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
Judge

Aadil