

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 2099 of 2017

Mahesh Goswami S/o Dhruw Giri Goswami, Aged About 19 Years R/o 20/10 Valmiki Nagar, Police Station Kabir Nagar, Raipur, Tahsil & District Raipur, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through The Police Station Kabir Nagar, Raipur, Tahsil & District Raipur, Chhattisgarh.

---- Respondent

For Applicant	:	Shri S.C. Verma, Advocate
For Respondent/State	:	Shri Chandresh Shrivastava, Panel Lawyer

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

18/05/2017

Heard.

1. This is repeat application for grant of bail to the applicant. His earlier bail application was dismissed as withdrawn.
2. The applicant has been arrested in connection with Crime No.125 of 2016 registered in Police Station- Kabir Nagar, Raipur, Tahsil and District -Raipur (C.G.) for alleged commission of offence under Sections 363, 366 and 376 IPC and Sections 4 & 6 of the Protection of Children from Sexual Offences Act, 2012.
3. Case of the prosecution, in brief, is that the applicant committed rape on the prosecutrix who is stated to be less than 18 years of age.
4. Learned counsel for the applicant submits that the statement of the prosecutrix recorded under Section 164 Cr.P.C would clearly show that the applicant and the prosecutrix were having an affair. He submits that even if there is allegation of sexual intercourse by the prosecutrix against the applicant, at this stage, the applicant may be granted bail because even according to school certificate, the

age of the prosecutrix is shown to be 17 years and 7 months and the ossification test which was carried out under the orders of the Court below, the age of the prosecutrix has been shown between 18 to 20 years. Therefore, there is a serious doubt with regard to age of the prosecutrix being less than 18 years.

5. On the other hand, learned counsel for the State has opposed the bail application. He submits that as per school certificate, the prosecutrix was less than 18 years of age (17 years and 7 months approximately). He submits that the result of ossification test is a matter of evidence. Lastly, it is submitted that the prosecutrix in her statement under Section 164 Cr.P.C. has clearly stated that the applicant committed rape with her, therefore, the consent is immaterial and case against the applicant is made out.
6. Having considered the submissions made by learned counsel for the parties, particularly taking into consideration the subsequent development regarding production of radiological report of ossification indicating age of the prosecutrix between 18 to 20 years and the submission of learned counsel for the applicant that the prosecutrix's statement under Section 164 Cr.P.C. indicates an affair between the applicant and the prosecutrix and further taking into consideration that the investigation is complete, charge sheet has been filed and that the applicant is not likely to abscond or in a position to tamper with prosecution witnesses, I am inclined to enlarge the applicant on bail.
7. The application is accordingly allowed. It is directed that the applicant shall be released on bail on his furnishing a personal bond in the sum of Rs.20,000/- along with one local surety for the like amount to the satisfaction of the concerned trial Court with following further conditions:
 - (i) The applicant shall not act in any manner which will be prejudicial to fair and expeditious trial; and
 - (ii) The applicant shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

Certified copy as per rules.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge