

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MISC. CRIMINAL CASE NO. 4863 OF 2017**

Abhimanyu Banjare S/o Ganesh Ram Banjare, Aged About 22 Years R/o Village Mohtara, Police Station Sarsiwa, District Balodabazar Bhatapara (Chhattisgarh).

**... Applicant**

**Versus**

State of Chhattisgarh Through The Station House Officer, Police Station Sarsiwa, District Balodabazar Bhatapara (Chhattisgarh).

**... Respondent**

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|----------------------|---|------------------------------------------------------------|
| For Applicant        | : | Shri Govind Ram Miri and Shri Basant Kaiwartya, Advocates. |
| For Respondent-State | : | Ms. M. Asha, Panel Lawyer.                                 |

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**Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

**31/07/2017**

1. This is repeat bail application seeking for grant of bail to the Applicant who is in jail since 04.04.2017 in connection with Crime No. 89 of 2017 registered at Police Station Sarsiwa, Distt. Baloda Bazar, for the offence punishable under Section 376 of IPC and under Section 4 of Protection of Children from Sexual offences Act, 2012. The earlier bail application was dismissed as withdrawn with liberty to revive the same after the charge sheet is filed vide MCrC No.3412 of 2017 dated 12.06.2017.
2. As per prosecution, the applicant is said to have ravished the prosecutrix on 08.02.2017 after giving her some intoxicating sweets and on which FIR was lodged on 01.04.2017 and based on which the present applicant was arrested on 04.04.2017 and since then he is in jail.
3. Counsel for the applicant referred to the statement under Sections 161 and 164 CrPC of the prosecutrix and referring these two

statements submitted that considering the age of the prosecutrix where she was more than 16 years and was studying in 10th standard and that she had voluntarily gone with the applicant and stayed the night at his house shows that there was a consensual relationship between the two. He further submits that though there is an allegation of alleged rape to have been committed on 08.02.2017, but the fact is that FIR was lodged only on 01.04.2017 which shows that there is a gap of almost two months and that no plausible and justifiable reason for the delay in lodging FIR is offered.

4. He further submits that the case of the prosecution also is not trustworthy for the reason that the prosecutrix makes a statement that she had immediately on the next day morning intimated about the incident to her father, but he has not taken any due care on such statement, which is otherwise, not practically believable. Thus, prayed for the release of the applicant on bail.
4. Opposing the bail application, learned Counsel for the State submits that the earlier bail application was dismissed as withdrawn and the fact that prosecutrix was minor only just about 16 years of age. Even if, there is a consensual relationship, the applicant would not get advantage of the same and thus prayed for rejection of the appeal.
5. Having gone through the records of the case diary as also the statement of the prosecutrix both under Sections 161 and 164, where the prosecutrix has made statement that she had voluntarily gone to the house of the applicant and stayed the night and that it also reflects that she had voluntarily consented with the applicant for having a physical relationship. Therefore, considering the age of the

prosecutrix, as also the age of the applicant, the unexplained delay in lodging FIR and from the overall circumstances, it appears to be a case where the prosecutrix had voluntarily gone with the applicant and had a physical relationship, this Court is of the opinion that the present is a fit case where the Applicant can be enlarged on bail.

6. Accordingly, the application for grant of bail is allowed. It is directed that the Applicant shall be released on bail on his furnishing a personal bond for a sum of Rs.20,000/- with one surety of the like sum to the satisfaction of the concerned Trial Court for his appearance as and when directed.

**Sd/-  
(P. Sam Koshy)  
Judge**