

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C. No. 994 of 2018**

Sharuk @ Swaroop Khan S/o Ramjan Khan, aged about 24 years, R/o near Bodh Vihar, Ambedkar Nagar, near Sai Nagar Urla, Police Station Mohan Nagar, Durg, District Durg, Chhattisgarh.

---- Applicant**Versus**

State Of Chhattisgarh Through The Station House Officer, Police Station Durg, District Durg Chhattisgarh, Chhattisgarh.

---- Respondent

For the Applicant : Shri T.K. Jha, Advocate.
For the Respondent/State : Shri Vivek Singhal, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****10.04.2018**

Heard.

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicant who has been arrested in connection with Crime No.860 of 2017, registered at Police Station – Durg, District – Durg, Chhattisgarh for the offence punishable under Sections 376(2)(N) and 506B of the Indian Penal Code and Section 5J(2) of the Protection of Children from Sexual Offences Act, 2012.

2. Learned counsel for the applicant submits that the applicant is in jail since 18.11.2017 and he has been falsely implicated in this case. After completion of investigation, the charge-sheet has been filed. No case is made out against the applicant on the basis of the material placed before the

Court by the prosecution. The prosecutrix had been a consenting party throughout. The span of time of incident is almost three months. On number of occasions, the prosecutrix met with the applicant and had consensual physical relationship. Hence, it is prayed that the applicant be enlarged on bail.

3. On the other hand, learned counsel for the State opposes the bail application and the submissions made in this respect. It is submitted that the age of the prosecutrix was below 18 years on the date of incident, hence, no theory of consent is applicable in this case. Hence, the applicant is not entitled for grant of bail.

4. Heard counsel for both the parties and perused the case diary.

5. According to the prosecution case, the applicant and the prosecutrix met in the month of March, 2017. Thereafter, on pretext of marrying, on number of occasions, the applicant established physical relation with the prosecutrix and whenever the prosecutrix used to refuse physical relation with the applicant, he used to threaten her. After lodging of FIR and during investigation, it was found that the prosecutrix was having pregnancy of seven months on the date of incident.

6. Considering the material present in the charge-sheet and looking to the nature of the case against the applicant and statement given by the prosecutrix deposing about relationship between her and the applicant which is to be examined by the trial Court whether it amounts to be a consent, I am of the view that the applicant should be granted regular bail during the

pendency of the trial.

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

8. It is directed that applicant shall be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned trial Court, for his appearance as and when directed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge