

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.CR.C. No. 7336 of 2017**

Digeshwar Shrivastava, S/o. Horilal Shrivastava, Aged About 18 Years,
Village Mahamayapara, Mahasamund, Thana- Mahasamund, Tahsil
Mahasamund, District -Mahasamund, Chhattisgarh

---- Applicant

Versus

State of Chhattisgarh, Through : The Police Station : Thana -Mahasamund,
District -Mahasamund, Chhattisgarh

---- Respondent

For Applicant	: Mr. Deepak Jain, Advocate
For Respondent/State	: Mr. Ashok Swarnakar, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board**12/01/2018**

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.489/2017, registered at Police Station – Mahasamund, District – Mahasamund (C.G.) for the offence punishable under Section 363, 366, 368, 376/34 of Indian Penal Code and Section 6 of Protection of Children from Sexual Offences (POCSO Act), 2012.
2. It is submitted by the learned counsel for the applicant that the applicant has been falsely implicated in this case. The applicant and the prosecutrix had love affair because of which, they developed

physical relationship on the basis of consent. The age of the prosecutrix had been 18 years on the date of incident. It is further submitted that, prosecutrix has given statement under Section 164 of Cr.P.C. that the applicant and the prosecutrix both are residing as husband and wife, hence, the applicant may 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 on the date of incident was below 18 years, hence the consent, if any, given by the prosecutrix is immaterial. Therefore, it is prayed that the applicant may not be released on bail.
4. I have heard the learned counsel for both the parties and perused the case diary.
5. Brief facts of the case are that the applicant allured the prosecutrix with promise to marry her and then she eloped with him on 11.09.2017. After lodging of missing report, prosecutrix was recovered from the custody of the applicant on 08.10.2017. Thereafter, the prosecutrix gave statement that applicant had on several occasions established physical relationship with her and the date of birth of the prosecutrix was found to be 31.08.1999, according to which, she was not capable to given consent on the date of incident.
6. Considered on the submissions made and the contents of the case diary. Considering the statement of the prosecutrix under Section 164 of Cr.P.C. in which, she states that even after prosecution of the applicant, she is living with the applicant. After filing of the charge-sheet, trial of the case is likely to take sometime for its completion. Taking into consideration all the facts and circumstances of this case,

this Court is of the opinion that present is a fit case, in which, the applicant should be enlarged on regular bail.

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.

Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge