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HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 4332 of 2018**

Aftab Khan S/o Shamim Khan Aged About 19 Years R/o L I G -
494, Padmanbhpur, Durg Police Station And District Durg CG

---- Applicant

Versus

State of Chhattisgarh through District Magistrate, District Durg
CG

---- Respondent

For applicant	Mr. Amiyakant Tiwari, Adv.
For Respondent/State	Ms. K. Tripti Rao, Govt. Adv.

Hon'ble Shri Justice Sharad Kumar Gupta**Order on Board****9-7-2018**

1. This is first bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court and his no bail application is pending before any other court.
2. The applicant has been arrested on 31-7-2017 in connection with Crime No. 185/2017 registered in police station Mohan Nagar, Distt. Durg (CG) for offence punishable under Sections 363, 366(A), 376, IPC and Sections 5(1) and 6 of the Protection of Children from Sexual Offences Act.
3. Perused the case diary.
4. Prosecution story in brief is that date of birth of the prosecutrix is 23-3-2001, she is resident of Sikola Bhatha, Durg. On 20-4-2017, the prosecutrix left the house. During investigation it was found that the applicant had taken away the prosecutrix and continuously committed sexual intercourse with her on the pretext of marriage.
5. Counsel for the applicant argued that the prosecutrix, her mother and her father had stated in their statements recorded in the Court during trial that the date of birth of the prosecutrix is 23-3-1998. The prosecutrix says that her mother and her father had lodged wrong date of birth. Her father says that at the time of

incident, the prosecutrix was major. Her mother says that when the prosecutrix left the house, she was major and her age was near 19 years. In these circumstances, it cannot not be said that at the time of the incident, the prosecutrix was below 18 years of age. He further submits that the applicant is innocent and falsely implicated hence he may be released on bail.

6. On the other hand, the Panel Lawyer appearing for the State opposed the bail application and argued that at this stage looking to the date of birth of the prosecutrix i.e. 23-3-2001 and on the strength of the statements of the prosecutrix, her mother and her father it cannot not be said that at the time of incident, the prosecutrix was above 18 years of age.
7. As per the progress report and Dakhil Kharij register, the date of birth of the prosecutrix is 23-3-2001. At this stage while deciding bail application, on the strength of aforesaid statements, it cannot not be said that on 20-4-2017, the prosecutrix was above 18 years old. Thus at this stage, the applicant does not get any help from the aforesaid statements for prima facie ascertaining the age of the prosecutrix.
8. Looking to the facts and circumstances of the case, looking to the seriousness of the alleged offence and also the impact of granting bail on the society, this Court is not inclined to grant bail to the applicant.
9. Consequently, the MCRC is dismissed.

Sd/-
(Sharad Kumar Gupta)
Judge