

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 4321 of 2018**

1. Shivam Paliha son of Sanjay Paliha, aged 20 years, R/o Dauna, Harijanpara, PS Jhimili, District Surajpur, CG

---- Applicant**Versus**

1. State of Chhattisgarh through SHO Police Station Jhilmili, District Surajpur, CG

---- Respondent

For Applicant	-	Shri Saktiraj Sinha, Advocate
For State	-	Shri Rahul Tamaskar, PL

Order on Board by Hon'ble Shri Justice Pritinker Diwaker**03/07/2018**

This application under Section 439 of the Code of Criminal Procedure has been filed by the applicant who is in custody in connection with Crime No. 08/2018 registered at Police Station Jhilmili, District Surajpur for commission of the offences punishable under Sections 363, 366, 376, 506 IPC and sections 4 and 5 of the POCSO Act.

2. Case of the prosecution in short is that the applicant took the minor prosecutrix with him and committed forcible sexual intercourse with her.

3. Counsel for the applicant submits that in the statement recorded under Section 164 of the Code of Criminal Procedure the prosecutrix has categorically stated that she accompanied the applicant of her own and that for one night she was kept in the house of his maternal aunt and thereafter on the next day she returned. He submits that even if the entire case of the prosecution is taken as it is, no offence under these sections is made out. He submits that there is no conclusive evidence to show that on the date of incident prosecutrix was minor.

3. State counsel however opposes the application for bail.

4. Considering the facts and circumstances of the case and looking to the statement of the prosecutrix recorded under Section 164 of the Code of Criminal Procedure and further that he is in jail since 12.01.2018, this Court is of the opinion that it is a fit case to release him on bail. Accordingly, the application is allowed and the applicant is directed to be released on bail on his furnishing a bond in the sum of Rs. 1,00,000/- (One Lakh) with one surety for the like sum to the satisfaction of the concerned Court for his appearance before that Court as and when directed.

Sd/-

(Pritinker Diwaker)

Judge

Jyotishi