

HIGH COURT OF CHHATTISGARH, BILASPURMCRC No. 5966 of 2018

- Ghanshyam Dhiwar S/o Shri Shankar Lal Aged About 20 Years R/o Village Hirmi, Thana Suhela, Civil And Revenue Distt. Balodabazar-Bhatapara Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Station Suhela, Civil And Revenue Distt. Balodabazar-Bhatapara Chhattisgarh.

---- Non-applicant

For Applicant : Shri Sunil Sahu, Advocate.

For Non-applicant : Shri Washim Miyan, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar GuptaOrder On Board07.09.2018

1. This is first bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court and no other bail application is pending before any other Court.
2. Perused the case diary provided by the learned counsel for the State in connection with crime No. 104/2018 registered at Police Station – Suhela, District – Balodabajar-Bhatapara (C.G.) for the offence punishable under Sections 376, 506 of the Indian Penal Code.
3. Case of the prosecution, in brief is that on 24.02.2018 prosecutrix was below 16 years of age, she was resident of village Hirmi. On 24.02.2018 when she had gone to field to reply nature's call applicant committed forcible sexual intercourse with her on the pretext of marriage. Thereafter, he committed sexual intercourse so many times with her on pretext of marriage. On 19.05.2018 at Tilda applicant abused

and beaten her.

4. Learned counsel for the applicant argued that prosecutrix was a consenting party, in her statements recorded u/s 161 Cr.P.C., 164 Cr.P.C., in MLC report, in statement recorded by CWC the age of the prosecutrix is mentioned as 16 years. In MLC report of prosecutrix it has been mentioned that no recent sign or injury seen in the private part which could be caused by act of intercourse.
5. On the other hand, learned counsel for the State opposes the bail application.
6. In the photocopy of the Dehati Nalisi the date of birth of prosecutrix is mentioned as 05.09.2003, prima facie, it appears that on 24.02.2018 prosecutrix was below 16 years of age.
7. What would be the effect of the medical report of the prosecutrix, it would be considered by the trial Court at the time of disposal of the case while considering the merits and demerits of the case.
8. Looking to the facts and circumstances of the case, looking to the fact that on 24.02.2018 prima facie, the prosecutrix was below 16 years of age, looking to the seriousness of the offence, looking to the impact of granting bail to the applicant on society, this Court is not inclined to give benefit of Section 439 of the Cr.P.C. to the applicant.
9. Consequently, the present bail application is rejected.
10. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)
JUDGE