

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1687 of 2017**

- State Of Chhattisgarh Through Police Station Bango District Korba Chhattisgarh.

---- Petitioner

Versus

- Roopsingh S/o Shri Phoolsingh Kanwar Aged About 27 Years R/o Village Dhangaon Police Station Balconagar District Korba Chhattisgarh.

---- Respondent

For Appellant/State : Shri Ravindra Agrawal,
Government Advocate

**Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Ram Prasanna Sharma**
ORDER

Per Prashant Kumar Mishra, J**05/02/2018**

1. After hearing learned counsel for the petitioner, delay of 85 days in filing the Cr.M.P. is condoned.
2. Also heard learned counsel for the petitioner on admission.
3. This application for Leave to Appeal has been preferred by the State challenging the judgment of acquittal rendered by the Special Additional Sessions Judge, Katghora (CG) in Special Sessions Trial No. 13/2015 on 21.4.2017, acquitting the accused/respondent of the charges under Sections 376, 493 & 506 Part II of the I.P.C. as well as under Section 4 of

the Protection of Children from Sexual Offences Act, 2012.

4. The prosecutrix lodged an F.I.R. on 12.4.2015, alleging that the accused/respondent sexually exploited her on the false promise of marriage from the year 2008 to 12.4.2015 and out of their relationship, she has given birth to a girl child- Ishika on 12.9.2014, however, after birth of the girl child, the accused/respondent stopped interacting with her and has also refused to marry her.

5. The trial Court has acquitted the accused/respondent on the ground that the prosecutrix was a consenting party because the act of commission of rape continued from 2008 to 2015 yet she did not raise any protest at any point of time. The trial Court has highlighted that there is inordinate delay in lodging the F.I.R.

6. Having seen the document filed with the application for Leave to Appeal, we are of the considered opinion that the trial Court has not committed any illegality or perversity in passing the impugned judgment of acquittal. We say so, because the prosecution case would itself demonstrate that the prosecutrix was married to one Tularam in the year 2009. She stayed with Tularam for about 2-3 days and came back to her parental house and continued her relations with the accused/respondent. There is no material on record to indicate that her marriage with Tularam was dissolved by any permissible instrument. The prosecutrix was thus, aware that till her marriage subsists with Tularam, her marriage with the accused is not possible yet she continued to have sexual relations with the accused/respondent. The allegation of committing sexual intercourse on

promise to marry is thus not substantiated. It further appears that till the baby girl Ishika was born on 12.9.2014, the prosecutrix had no difficulty with the relationship. But soon after the accused's refusal to maintain the child, the instant report was lodged. There is inordinate delay in lodging the F.I.R., which is not properly explained by the prosecution. It is also not a case where till the date of lodging the F.I.R., prosecutrix remained a minor girl as she attained the age of consent in the year 2009 itself, if not in the year 2008, but continued with the sexual relations for seven more years thereafter. All these reasons have rightly weighed in the mind of the trial Judge to render the impugned judgment of acquittal.

7. There is no substance in this application for Leave to Appeal, therefore, it deserves to be and is hereby dismissed.

Sd/

(Prashant Kumar Mishra)
Judge

Sd/

(Ram Prasanna Sharma)
Judge