

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 403 of 2019**

- Banti @ Sagar Rajak S/o Santosh Rajak Aged About 20 Years R/o Kududand, Near Gayatri Mandir, Bilaspur P. S. Civil Line, District Bilaspur Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Police Station Civil Line, District Bilaspur Chhattisgarh

---- Non Applicant

For the Applicant	:	Dr. Shiv Kumar Shrivastava, Advocate
For the State	:	Shri SRJ Jaiswal, Panel Lawyer
For the Informant	:	Shri Devesh G. Kela, Advocate

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****02.05.2019**

1. Allegedly Informant- Rajesh Gidwani is present in person before this Court. After putting some questions, this Court has satisfied that person, who is present in the Court, is informant Rajesh Gidwani.
2. Heard on I.A. No.1 application for taking additional documents on record.
3. Looking to the facts and circumstances of the case, I.A. No.1 is allowed. The documents are taken on record. I.A. No.1 disposed of accordingly.
4. This is the 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.
5. Perused the case diary provided by the learned counsel for the State in connection with Crime No.870/2018 registered at Police Station- Civil Line, District- Bilaspur (C.G.) for the offence punishable under Sections 363, 366, 376, 212 of Indian Penal Code and Section 4 POCSO Act.
6. Case of the prosecution, in brief is that on 06.10.2018 prosecutrix was below 14 years of age. She is resident of Sindhi Colony, Bilaspur. On 06.10.2018, applicant took her and committed sexual intercourse with her, though nothing was done forcibly with her.
7. Learned counsel for the applicant submits that applicant has no criminal background, he is innocent and has been falsely implicated in the present case, therefore, he shall be released on bail.
8. On the other hand, learned counsel for the State opposes the bail application, however, submits that there is no criminal antecedent against the applicant.
9. Counsel for the informant submits that he has objection in releasing the applicant on bail.
10. Counsel for the applicant drew my attention on paras 3 and 5 of the true copy of the statement of the prosecutrix recorded by trial Court. He placed reliance on order

passed by this Court in the matter of **Birbal Yadav Vs. State of Chhattigarh** through Station House Officer.

11. In the case in hand, prosecutrix is not totally hostile witness. She had stated in paras 1 and 3 against the applicant.
12. This is well settled legal position that while dealing with bail application, this Court neither appreciate nor scrutinize the evidence at this stage. Court can not touch the merits and demerits of the case.
13. In the case of **Birbal Yadav Vs. State of Chhattigarh** decided by this Court on 19.07.2018 passed in MCRC No.3719 of 2018, the prosecutrix was not below 16 years of age, she had not stated anything against the applicant thus facts and circumstances of this case totally different from that case. Thus, the applicant does not get any help from the case of **Birbal(Supra)**.
14. Looking to the above mentioned facts and circumstances of the case, looking to the material available on record against the applicant, looking to this fact that at the time of alleged incident prosecutrix was below 14 years of age, looking to the seriousness of the offence, looking to the impact of granting bail to the applicant on society, the present bail application is rejected.
15. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)
Judge

Parul