

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 1226 of 2019

- Amit Dhruw @ Amir @ Ashish Dhruw S/o Janak Ram Dhruw Aged About 20 Years R/o Village Sagar, Police Station-Gendatola District Rajnandgaon Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Police Station Rajim District Gariyaband Chhattisgarh

---- Respondent

For Applicant	:	Shri Raza Ali, Advocate
For State	:	Shri Vikas A. Shrivastava, Panel Lawyer

S.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

03/05/2019

This is a repeat application for grant of bail. Earlier application was dismissed as withdrawn on 27/02/2017.

The applicant has been arrested in connection with Crime No.112/15 registered at Police Station – Rajim, District - Gariyaband (C.G.) for alleged commission of offence under Section 366, 376 of IPC and Section 4, 6 of POCSO Act.

2. The case of the prosecution is that the applicant kidnapped the prosecutrix (a minor) and she was taken to different places and rape was committed on her.

3. Learned counsel for the applicant would argue that now, the prosecutrix has been examined in the Court and her evidence clearly shows that the prosecutrix and the applicant were consenting parties. They had an affair and they had eloped. He would next submit that even according to the prosecutrix, on the date when she had eloped with the applicant, she was aged 17 years 11 months and 13 days. It is submitted that the prosecutrix states that she and the applicant had stayed together for about two months and during that period, sexual intercourse was committed on her. Therefore, it cannot be said that sexual intercourse was committed before completion of 18 years. Even according to the prosecution, the prosecutrix was 18 years of age on

21/06/2015. It is next submitted that the father of the prosecutrix has also been examined and he has stated that at the time when the prosecutrix was admitted in the school, she was about 6½ to 7 years of age and from this also, it is highly probable that the prosecutrix, even on the date she had eloped with the applicant, she had completed 18 years of age.

4. On the other hand, learned State counsel opposes bail application and submits that as per the date of birth stated in the charge sheet, the date of birth recorded in the school records is 21/06/1997. Therefore, on the date, when she had gone along with the applicant, she was 17 days short of attaining 18 years. It is submitted that trial is not concluded and looking to the gravity of allegations, the application may be rejected.

5. It is found that the applicant was arrested in the present case on 14/01/2016 and even after lapse of three years, trial has not been concluded. However, material prosecution witnesses like the prosecutrix, her father, doctor and holder of school records have already been examined. Even according to the case of the prosecution, the date on which the prosecutrix said to be eloped with the applicant, she was only 17 days short of attaining majority. The date on which sexual intercourse was committed, has not been clearly stated. Therefore, taking into consideration the submission of learned counsel for the applicant that the prosecutrix and applicant had love affair and their relationship was consensual in nature and that the applicant is in jail for the last three years, I am inclined to grant bail to the applicant.

6. Accordingly, the application is allowed. It is directed that the applicant shall be released on bail on his furnishing a personal bond in the sum of Rs.20,000/- along with two local sureties for the like amount to the satisfaction of the concerned Trial Court, with following further conditions:

- (i) The applicant shall not act in any manner which will be prejudicial to fair and expeditious trial; and
- (ii) The applicant shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

Certified copy as per rules.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge