

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 1123 of 2019**

Khilanand @ Gulshan Kumar S/o Radhe Shyam Nishad Aged About 22 Years R/o Village Ghotia, P. S. Dondi, District Balod Chhattisgarh, District : Balod, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through The Station House Officer, Police Station Dondi, District Balod Chhattisgarh, District : Balod, Chhattisgarh.

---- Respondent

For the Applicant	:	Shri Shikhar Bakhtiyar, Advocate
For the State	:	Shri Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta

Order On Board**02/04/2019**

1. Informant is absent though notice has been served upon her.
2. This is the first bail application under Section 439 of the CrPC and there is no bail application is pending before any other Court.
3. Perused the case diary provided by the learned counsel for the State in connection with the Crime No.33/2018 registered at Police Station Dondi, District Balod (C.G.) for the offence punishable under Sections 366, 376 of IPC and Section 4,5(I)/6 of POCSO Act and Section 3(2)(5) of SCST Act.
4. Case of the prosecution, in brief is that on 27/11/2016 prosecutrix was below 15 years of age. She is resident of village Odgaon. On 27/11/2016 applicant took her on pretext of the marriage. He committed repeatedly sexual intercourse with her on pretext of the marriage
5. Learned counsel for the applicant submits that he is innocent and falsely implicated in the present case, therefore, he shall be released on bail.
6. On the other hand, counsel for the State opposes the bail application. He further submits that no criminal antecedents against the applicant.
7. Counsel for the applicant further submitted that in the case in hand FIR is delayed by two years. There is no conclusive proof of age of the prosecutrix, thus applicant may be released on bail.

8. At this stage, the Court has to consider the *prima facie* material available on record while dealing with the bail application, Court cannot consider the merits and demerits of the case.
9. What would be the effect of delay lodging the FIR is the subject matter of the scrutiny.
10. Looking to the facts and circumstances of the case, looking to this fact that on 27/11/2016 prosecutrix was below 15 years of age, looking to the seriousness of the alleged offence, looking to the impact of granting bail to the applicant on society, the present bail application is rejected.

Sd/-
(Sharad Kumar Gupta)
Judge

Kamde