

HIGH COURT OF CHHATTISGARH, BILASPURMCRC No. 1169 of 2019

- Kanhaiya Shivvanshi S/o Rajesh Shivvanshi Aged About 22 Years R/o Ward No. 5, Samnapur, Police Station- Nainpur, District- Mandla, Madhya Pradesh., District : Mandla, Madhya Pradesh

---- Applicant

Versus

- State Of Chhattisgarh Through Police Station- Rajhara, District- Balod, Chhattisgarh., District : Balod, Chhattisgarh

---- Non-applicant

For Applicant	: Shri Shrawal Agrawal, Advocate.
For Non-applicant	: Shri Washim Miyan, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta
Order On Board

29.04.2019

1. The informant Nirmala Bai Sahu is absent though notice has been served upon her.
2. 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.
3. Perused the case diary provided by the learned counsel for the State in connection with crime No. 90/2018 registered at Police Station – Rajhara, District – Balod (C.G.) for the offence punishable under Sections 363, 366, 376 of the Indian Penal Code and Section 4/6 of Protection of Children from Sexual Offences Act.
4. Case of the prosecution, in brief is that on 18.05.2018 prosecutrix was below 16 years of age. She is resident of village Bitul. On 18.05.2018 applicant took her forcibly to Dongargarh and committed forcible sexual intercourse with her saying that he wants to marry with her.
5. Learned counsel for the applicant argued that the applicant has no criminal background, he is innocent, therefore, he shall be released on bail.
6. On the other hand, learned counsel for the State opposes the bail application, however, submits that there is no antecedent against the applicant.
7. Counsel for the applicant drew my attention on the statement of the prosecutrix recorded under Section 164 Cr.P.C. where it has been mentioned that alleged incident has been committed by some unknown boy. The statement recorded under Section 164 Cr.P.C. has more sanctity than statement recorded under Section 161 Cr.P.C., thus he may be released on bail.
8. Looking to the facts and circumstances of the case, looking to the fact that at the time of alleged incident prosecutrix was below 16 years of age, looking to the statements of prosecution witness recorded under Section 161 Cr.P.C., 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.
9. Certified copy as per rules.

Sd/-
 (Sharad Kumar Gupta)
JUDGE