

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 1386 of 2019**

Suresh Kanthle, S/o late Shri Mahajan Das Kanthle, aged about 20 years, R/o Saakin Beltukari, Police Station Nandghat, District Bemetara (CG). **---- Applicant**

Versus

State of Chhattisgarh, through Station House Officer, Police Station Nandghat, District Bemetara (CG). **---- Non-applicant**

For Applicant	: Mr. K. Rohan, Advocate
For Non-applicant	: Mr. Ashutosh Pandey, Panel Lawyer
For Objector	: Mr. Shobhit Koshta, Advocate

Hon'ble Shri Justice Sharad Kumar Gupta
Order On Board

11.04.2019

1. This is first bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court.
2. Perused the case diary provided by the counsel for the State in connection with Crime No.269/2018 registered in Police Station Nandghat, District Bemetara for the offence punishable under Sections 363, 366A, 376 & 342 of Indian Penal Code, 1860 and Sections 4, 5L & 6 of Prevention of Children from Sexual Offences Act.
3. Case of the prosecution, in brief, is that in the winter season in the year, 2017 the prosecutrix was below 16 years of age. She is resident of village Beltukari. There was love affair between her and the applicant. In the winter season year in the year, 2017, the applicant committed forcibly sexual intercourse with her thrice. On 23.08.2018, he called her through telephone by enticing on pretext of the marriage, he took her and again committed forcibly sexual intercourse with her.
4. Counsel for the applicant submitted that the applicant has not committed any offence and has been falsely implicated in the case and as such he may be released on bail. He drew my attention on cross-examination and court's question of enclosed certified copy of statement of prosecutrix recorded by the trial Court, which is a part of bail application.
5. On the other hand, counsel for the State opposed the bail application. However, he submits that no criminal antecedent of the applicant is reported in police case diary.
6. Counsel for the objector submitted that he has objection if the applicant is released on bail.
7. In the case in hand, the prosecutrix had made some statements against the applicant in examination-in-chief and made some statements in favour of

applicant during cross-examination and during question putting by the trial Court. At this stage, this Court cannot scrutinize the testimony of prosecutrix. This is well settled legal provision of law that while dealing with the bail application, the Court cannot touch the merits and demerits of the case. The competent Court, which can scrutinize the evidence is the trial Court.

8. Looking to the above mentioned facts and circumstances of the case, looking to this fact that at the time of winter season in the year, 2017, the prosecutrix was below 16 years of age, this Court is not inclined to give benefit of Section 439 of the Cr.P.C. to the applicant. Consequently, the bail application is rejected.

9. Certified copy as per rules.

Sd/-
(Sharad Kumar Gupta)
JUDGE

L/-