

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 1294 of 2019**

Abhishek Soni, S/o Shri Yashwant Soni, aged about 19 years, R/o Quarter No.20/D,
Street No.18, Kemp-1, Bhilai, P.S. Chhawani, District Durg (CG). ---- **Applicant**

Versus

State of Chhattisgarh, through Police Station Chhawani, District Durg (CG).

---- **Non-applicant**

For Applicant	: Mr. Mayank Chandrakar, Advocate
For Non-applicant	: Ms. M. Asha, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta
Order On Board

11.04.2019

1. Informant/prosecutrix is present in person before this Court. On pulling some inquiries, I am satisfied that informant/prosecutrix, who is present before this Court is the informant/prosecutrix.
2. This is first bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court.
3. Perused the case diary provided by the counsel for the State in connection with Crime No.423/2018 registered in Police Station Chhawani (Durg) for the offence punishable under Sections 363, 366, 376 of IPC and Sections 3 & 4 of POCSO Act.
4. Case of the prosecution, in brief, is that on 26.05.2018 the prosecutrix was below 14 years of age. She is resident of Azaad Nagar, Bhilai. She and applicant had liked to each other. On 26.05.2018 the applicant took her and committed sexual intercourse with her.
5. 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 further submitted that there are contradiction in the statement of prosecutrix recorded under Sections 161 & 164 of CrPC and there is interpolation in the *Dakhil Kharij Register* regarding the age of the prosecutrix, medical evidence did not support the prosecution case. In support of his case, he drew my attention on Annexure A/2, which is a part of bail application.
6. 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.
7. Informant/prosecutrix submitted that if the applicant is ready to marry with her then he will be released on bail. Otherwise, she has objection for

releasing the applicant on bail.

8. The aforesaid circumstances pointed out by the counsel for the applicant are subject matter of scrutiny, which this Court drew at this stage. The well settled legal principle of law that while dealing with the bail application, the Court cannot touch the merits and demerits of the case.

9. Looking to the above mentioned facts and circumstances of the case, looking to the age of prosecutrix, who was below 14 years of age at the time of alleged incident, looking to prima facie material available on record against the applicant, 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.

10. Certified copy as per rules.

Sd/-
(Sharad Kumar Gupta)
JUDGE

L/-