

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MCRC No. 2471 of 2019**

- Jaiprakash Sahu S/o Hariram Sahu Aged About 23 Years By Caste Teli, R/o Village Temari Police Station Mungeli, District Mungeli CG

---- Applicant

**Versus**

- State Of Chhattisgarh Through Police Station Mungeli District Mungeli CG

---- Respondent

For applicant                      Mr. Rohitaswa Singh, Adv.  
For non-applicant/State      Mr. Vikram Dixit, Govt. Adv.

**Hon'ble Shri Justice Sharad Kumar Gupta**

**ORDER ON BOARD**

**26-4-2019**

1. This is first bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court and his no bail application is pending before any other court.
2. The applicant has been arrested in connection with Crime No. 573/2018 registered in police station Mungeli, Distt. Mungeli (CG) for offence punishable under Section 363, 376, 34 of IPC and Section 4 and 6 of the POCST Act.
3. Prosecution story in brief is that on 28-11-2018 prosecutrix was more than 17 years of age. She is a resident of village Karupan. On 27-11-2018 co-accused Chandra Kumar Yadav went to prosecutrix by car, applicant was also along with him. Co-accused Chandra Kumar Yadav took the prosecutrix saying that they will go to Bilaspur for roaming. After leaving the prosecutrix and co-accused Chandra Kumar Yadav at Bilaspur station, applicant returned back. Co-accused Chandra Kumar Yadav took her to Bhopal and committed repeatedly sexual intercourse with her. As per the statement of the prosecutrix recorded under Section 164 of the Cr.P.C. she had stated that there was love affair between her and the co-accused Chandra Kumar Yadav. They had planned to go outside. She had gone on her wish and will. Co-accused Chandra Kumar Yadav and she had performed marriage.

4. Counsel for the applicant argued that the applicant is innocent and has been falsely implicated. Main accused Chandra Kumar Yadav has been released on bail by this Court, the case of the applicant is less severe than Co-accused Chandra Kumar Yadav thus, looking to the principle of parity the applicant may also be released on bail.
5. On the other hand, the State Counsel opposed the bail application. He further submits that no criminal antecedent has been reported against applicant in the police case diary.
6. This Court has communicated the order dated 29-11-2018 passed in MCRC No. 8487/2018 (Venktesh Kanhaiya (K. Venktesh Kanhaiya -v- State of CG) to all the subordinate judicial officers of the State. The relevant paragraphs 8 and 9 of that order are extracted herebelow :-

“8. In **Deepak Kumar Ratre -v- State of Chhattisgarh**, [2001(2) MPHT 89 (CG)] following judicial precedent has been laid down by this Court in para 9 :-

**“The grant of application in favour of some of the accused should earnestly persuade a judicial officer to grant bail to the co-accused if the allegations are identical or there are no material differences in the allegations. This Court had been repeatedly saying that if the allegations are identical or almost similar then similar should be treated similarly. I fail to understand as to why a judicial officer should act arbitrarily and in such a whimsical manner in rejecting the application for grant of bail. If the three named persons were granted bail, by any other judicial officer, then so long as the said order is in existence or is not set aside by any revisional court then such order would provide a foundation in favour of the co-accused for his release. It would be hight of the judicial impropriety to say that because some Judge had granted bail to some of the co-accused, the same order would not enure to the benefit of the co-accused before any other Judge.”**

**9. Looking to the facts and circumstances of the case, it transpires that there is no material difference in the allegation leveled against the applicant and co-accused Kailash Kaushal. Parity demands that if allegations are identical or almost similar or case of the applicant is less severe, then similar or less severe should be treated similarly. Once a co-accused is granted bail then other co-accused whose role is similar or not more severe is also entitled for bail.”**

- 7. The certified copy of order dated 2-4-2019 passed by the Special Judge (POCSO Act) Mungeli reveals that it was in the knowledge of Special Judge (POCSO Act), Mungeli that co-accused Chandra Kumar Yadav has been released on bail by this Court.**
8. In the case in hand the case of applicant is less severe than the co-accused Chandra Kumar Yadav who was released on bail by this Court. Special Judge (POCSO Act), Mungeli has not given finding that case of the applicant is more severe in any manner than the case of co-accused Chandra Kumar Yadav who was released on bail by this Court.
- 9. Earlier it was noticed while deciding CRMP No. 2426/2018 on 7-1-2019 that same Judge had not applied the ratio laid down in Deepak Kumar Ratre (supra) which she should have applied.**
- 10. It has been repeatedly said that discretion should be judicious and not arbitrary. Parity demands that if allegations are identical or almost similar or case of the applicant is less severe, than similar or less severe should be treated similarly. Special Judge (POCSO Act), Mungeli (Smt. Nilima Singh Baghel) overlooked the ratio laid down in Venkatesh Kanhaiya (supra) and Deepak Kumar Ratre(supra) in correct perspective and true spirit, though it was expected from her.**
11. Looking to the above facts and circumstances of the case, application is allowed. It is ordered that if the applicant furnishes one solvent

surety for a sum of Rs. 25,000/- along with one personal bond of the like sum to the satisfaction of the trial Court concerned, he be released on bail.

12. Addl. Registrar (Judicial) is directed to send a copy of this order to the the District and Sessions Judge, Mungeli.

Sd/-

**(Sharad Kumar Gupta)**

Judge