

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 2746 of 2019**

- Ghanshyam Dhiwar S/o Shri Shankar Lal Aged About 20 Years R/o Village Hirmi, Police Station Suhela, Civil And Revenue District- Baloda Bazar-Bhatapara, Chhattisgarh

---- Applicant**Versus**

- State Of Chhattisgarh Through Police Station Suhela, Civil And Revenue District- Balodabazar-Bhatapara, Chhattisgarh

----Non Applicant

For the Applicant : Mr. Adil Minhaj, Advocate

For Non Applicant : Shri Washim Miyan, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****08.05.2019**

1. This is second bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court. No other bail application is pending before any other Court.
2. Earlier, the first bail application of the applicant was rejected by this Court by order dated 07.09.2018 passed in MCRC No.5966 of 2018 considering the prima facie case against him.
3. Perused the case diary provided by the learned counsel for the State in connection with Crime No.104/2018 registered at Police Station- P.S. Suhela, District- Baloda Bazar-Bhatapara (C.G.) for the offence punishable under Section 376 & 506 of Indian Penal Code and Section 4 of Protection of Children from Sexual Offences Act, 2012.
4. Case of the prosecution, in brief is that on 24.02.2018 prosecutrix was below 16 years of age, she was resident of village Hirmi. On 24.02.2018 when she had gone to field to reply nature's call applicant committed forcible sexual intercourse with her on the pretext of marriage. Thereafter, he committed sexual intercourse so many times with her on pretext of marriage. On 19.05.2018 at Tilda, applicant abused and beat her.
5. Counsel for the applicant submits that as per the photocopy of FIR dated 19.05.2018 lodged by prosecutrix, her date of birth is mentioned as 2000, in the statement of the prosecutrix recorded under Section 161 CrPC, her age is mentioned as 18 years. He drew my attention on Annexure A3 which is the part of the bail application. He further drew my attention on affidavits A5 which are also the part of the bail application. He further drew my attention on some paragraphs of photocopy of statement of prosecutrix which is the part of the bail application. He submits that in these circumstances, applicant may be released on bail.
6. On the other hand, learned counsel for the State opposes the bail application, however, he submits that there is no antecedent against the applicant.
7. In the photocopy of the Dakhil Kharij register the date of birth of prosecutrix is mentioned as 05.09.2003. Prima facie, it appears that on 24.02.2018 prosecutrix was below 16 years of age.
8. This is well settled legal position that while dealing with bail application, this Court neither appreciate nor scrutinize the evidence at this stage, this Court can not touch the merits and demerits of the case.
9. The aforesaid circumstances raised by the counsel of the applicant are the subject matter of scrutiny, which this Court cannot do at this stage.
10. Looking to the facts and circumstances of the case, this Court finds that there is no change of circumstance, which may entitle the applicant to enlarge on bail in second round of litigation, thus second bail application is rejected.
11. Certified copy as per rules.

Sd/-
(Sharad Kumar Gupta)
 Judge