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**HIGH COURT OF CHHATTISGARH, BILASPUR****M.Cr.C. No. 3634 of 2019**

Nageshwar Sahu S/o Late Sant Kumar Sahu Aged About 20 Years Caste- Sahu, R/o Village- Rewagahan, Post- Bhendra, Police Station- Bhakhara, Tahsil And District- Dhamtari, Chhattisgarh., District : Dhamtari, Chhattisgarh.

**---- Applicant****Versus**

State Of Chhattisgarh Through Station House Officer, Police Station- Bhakhara, District- Dhamtari, Chhattisgarh., District : Dhamtari, Chhattisgarh.

**---- Respondent**


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For the Applicant : Smt. Indira Tripathi, Advocate.  
For the Respondent/State : Shri Ghanshyam Patel, P.L.

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant****ORDER****17.07.2019**

Heard.

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicant who has been arrested in connection with Crime No.1 of 2019, registered at Police Station – Bhakhara, District – Dhamtari, Chhattisgarh for the offence punishable under Sections 363, 366 and 376 of the Indian Penal Code, Section 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 3(2)(5) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

2. Learned counsel for the applicant submits that the applicant is in jail since 31.1.2019 and has been falsely implicated in this case. No case is made out against the applicant on the basis of the material placed before the Court by the prosecution. The prosecutrix in this case is a major girl. The prosecutrix has very clearly made a statement under Section 164 of the Cr.P.C. that she had willingly accompanied, stayed with the applicant and had physical relation with him. Hence, it is prayed that the applicant be enlarged on bail.

3. On the other hand, learned counsel for the State opposes the bail application and the submissions made in this respect. It is submitted that according to the investigation made the age of the prosecutrix was below 18 years therefore, the physical relation between the applicant and the prosecutrix in this case amounts to commission of rape. Hence, for these reasons, the applicant is not entitled for grant of bail.

4. Heard counsel for both the parties and perused the case diary.

5. According to the prosecution case, on 22.12.2018, the applicant made proposition of marriage to the minor prosecutrix and then raped her. Thereafter, he took her to places and while staying there he continuously exploited the prosecutrix on number of occasions. After recovery of the prosecutrix, on the basis of her statement, the FIR has been lodged.

6. On perusing the statement given by the prosecutrix under Section 164 of the Cr.P.C., it appears that she was a consenting party, however, there is

element of age regarding which proof is only the school register. Learned counsel for the applicant submits that the school entry register is not a conclusive evidence. Therefore, I feel inclined to grant bail to the applicant in this case.

7. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed.

8. It is directed that applicant shall be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned trial Court, for his appearance as and when directed. In case any default is committed by the applicant/s in appearing before the concerned trial Court, this order granting bail shall stand cancelled automatically.

**Sd/-**

**(Rajendra Chandra Singh Samant)**  
Judge