

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 4047 of 2019**

- Sagar Nishad S/o Late Somnath Nishad Aged About 40 Years R/o Ramnagar, Shitla Para, Ward No.18, Gali No.04, Raipur, P.S. Gudhiyari, Raipur, District- Raipur, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Durg, Civil And Revenue District- Durg, Chhattisgarh

---- Non Applicant

For the Applicant	:	Shri Sanjay Kumar Agrawal, Advocate
For Non Applicant	:	Shri Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta

Order On Board

21/08/2019

1. Informant- Karan Dheemar is absent, though notice has been served upon him.
2. This is the first bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court and no other bail application is pending before any other Court.
3. Perused the case diary provided by the learned counsel for the State in connection with Crime No.39/2019 registered at Police Station- Durg District- Durg (C.G.) for the offence punishable under Sections 363, 366, 376 of the Indian Penal Code and Section 4 of the

Protection of Children from Sexual Offences Act, 2012.

4. Case of the prosecution, in brief is that on 11.12.2018 prosecutrix was below 16 years of age. She is resident of Durg. There was the love affair between her and applicant, on 11.12.2018 he took her by threatening. He committed repeatedly sexual intercourse with her on pretext of the marriage.
5. Learned counsel for the applicant submits that applicant has no criminal background, he is innocent and has been falsely implicated in the present case, therefore, he further submits that charge sheet has been filed, applicant is in jail since 07.02.2019. As per the MLC, doctor opined that no definite opinion can be given about recent sexual intercourse. He drew my attention on the statement of the prosecutrix recorded under Section 164 where it has been mentioned that sexual intercourse was committed with her on her wish and will. In these circumstances applicant may be released on bail.
6. Now it is well settled legal principle that mere non-corroboration of medical evidence does not falsify the prosecution case.
7. On the other hand, learned counsel for the State opposes the bail application, however, submits that there is no criminal antecedent against the applicant in police case diary.
8. Looking to the above mentioned facts and circumstances of the case, looking to the material available on record, looking to this fact that on 11.12.2018 prosecutrix was below 16 years of age, looking to the seriousness of the offence, looking to the impact of granting bail to the applicant on society, the present bail application is rejected.

Sd/-

(Sharad Kumar Gupta)
Judge