HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 4076 of 2019

- Dinesh Patel S/o Shyam Kumar Patel Aged About 21 Years Caste Aghariya, R/o Village Durgapali, Police Station Saraipali, Tahsil Basna, District Mahasamund Chhattisgarh., District : Mahasamund, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Saraipali, District Mahasamund Chhattisgarh., District : Mahasamund, Chhattisgarh

---- Non-applicant

For Applicant : Shri Roop Naik, Advocate.

For Non-applicant : Shri Ravi Maheshwari, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta

Order On Board

30.08.2019

1. This is 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.
2. Perused the case diary provided by the learned counsel for the State in connection with crime No. 205/2019 registered at Police Station – Saraipali, District – Mahasamund (C.G.) for the offence punishable under Sections 376 of the Indian Penal Code and Sections 04, 06 of the POCSO Act.
3. Case of the prosecution, in brief is that prosecutrix is the resident of Chhotesajapali. As per the mark-sheet her date of birth is 11-12-2002. As per the Kotwari record her date of birth is 26.08.2004. There was a love affair between her and applicant. On 30-05-2019 onwards he committed repeatedly sexual intercourse with her on pretext of marriage. Thereafter he refused to marry her.

4. Learned counsel for the applicant argued that the applicant has no criminal background, he is innocent, he further submitted that there was a love affair between the applicant and prosecutrix, therefore, he shall be released on bail.
5. On the other hand, learned counsel for the State opposes the bail application, however submits that there is no criminal antecedent against the applicant.
6. At this stage looking to the entry of the Kotwari Register, prima facie, it appears that on 30.05.2019 prosecutrix was below 16 years of age.
7. Looking to the above mentioned facts and circumstances of the case, looking to the prima facie material available on record, looking to this fact that at the time of alleged incident prosecutrix was prima facie below 16 years of age, this Court is not inclined to give benefits under Section 439 of the Cr.P.C.
8. Consequently, the present bail application is rejected. Liberty is granted to the applicant to file subsequent application on new grounds.
9. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)
JUDGE

kishore