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HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 5920 of 2019**

- Rajiv Kumar Yadav @ Raju S/o Baraturam Yadav Aged About 26 Years
R/o Village Dindayal Colony, Dhimarapur (Satya Transport Company
Office) Taluka Raigarh, District- Raigarh, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Police Choki Belgahna, Police Station
Chakradhar Nagar, Raigarh, District- Raigarh, Chhattisgarh

---- Non Applicant

For the Applicant : Mr. Badruddin Khan, Advocate

For Non Applicant : Mr. Vaibhav K. Agrawal, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****23.09.2019**

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 13.05.2019 passed in MCRC No.2784/2019 considering prima facie case against him.
3. Perused the case diary provided by the learned counsel for the State in connection with Crime No.20/2019 registered at Police Station- Chakradhar Nagar, Raigarh District-Raigarh(C.G.) for the offence punishable under Sections 363, 354 of the IPC and Section 12 of POCSO Act.
4. Case of the prosecution in brief is that on 18.01.2019 prosecutrix was below 15 years of age. She is resident of Krishnavatika, Boirdadar, Raigarh. On 18.01.2019 co-accused Vicky @ Vivek and applicant Rajeev Kumar Yadav @ Raju took her by car. On moving vehicle

applicant Rajeev Kumar Yadav @ Raju caught hold her hands, molested her and kissed her.

5. Trial Court framed the charge against the applicant Rajeev Kumar Yadav @ Raju under Sections 363 and 354 of IPC and under section 12 of POCSO Act.
6. Counsel for the applicant submitted that in the case in hand, prosecutrix has been examined, she turned hostile, did not say anything against the applicant. Section 363 is bailable. Counsel for the applicant drew my attention on Para 36 of the true copy of the statement of the prosecutrix which is the part of the bail application. Thus, applicant may be released on bail.
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. As per the photocopy of the statement of the prosecutrix, she had made statement against the applicant in Paras 14 and 26.
9. This is well settled legal position that while dealing with the bail application, Court can neither scrutinize the evidence nor appreciate the evidence.
10. The competent Court which can do so, is only the trial Court.
11. Looking to the above mentioned facts and circumstances of the case, this Court finds that there is no material change in circumstances which may entitle the applicant to be released on bail in second round of litigation. Consequently, the second bail application is rejected.

Sd/-
(Sharad Kumar Gupta)
Judge