

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 6853 of 2019**

Kanhaiya Shivvanshi, S/o Rajesh Shivvanshi, aged about 22 years, R/o Ward No.5 Samnapur, P.S. Nainpur, District Mandla (M.P.)

---- Applicant**Versus**

State of Chhattisgarh, through Police Station Rajhara, District Balod (CG).

---- Non-applicant

For Applicant	: Mr. S.S. Baghel, Advocate
For Non-applicant	: Mr. Suyash Dhar, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****07.11.2019**

1. This is second bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court.
2. Perused the case diary provided by the counsel for the State in connection with Crime No.90/2018 registered at Police Station Rajhara, District Balod for the offence punishable under Sections 363, 366, 376 of Indian Penal Code and Section 6 of POCSO Act.
3. The first bail application of the applicant was rejected on merits by this Court vide order dated 29.04.2019 passed in M.Cr.C. No.1169/2019.
4. Case of the prosecution, in brief, is that on 18.05.2018 prosecutrix was below 16 years of age. She is resident of village Bitul. On 18.05.2018 applicant took her forcibly to Dongargarh and committed forcible sexual intercourse with her saying that he wants to marry with her.
5. Counsel for the applicant submitted that the applicant has no criminal background and he is an innocent person. He further submitted that it is the case of consent. As per the statement of mother of prosecutrix, the date of birth of prosecutrix is 29.04.2000. In support of case, he drew my attention on para No.21 of photocopy of statement of

mother of prosecutrix (P.W.2).

6. On the other hand, counsel for the State opposed the bail application. However, he submitted that no criminal antecedent has been reported against the applicant as per police case diary.

7. As per mark-sheet and admission register, the date of birth of prosecutrix is 29.07.2002. This is well settled legal principle that while dealing with the bail application, the Court can neither scrutinize nor appreciate the evidence. This is also established principle that the Court also cannot touch the merit and demerit of the case. The Court which can appreciate the evidence is only the trial Court.

8. Looking to above mentioned facts and circumstances of the case, this Court finds that it is not a fit case where the applicant may be released on bail in the second round of litigation. Consequently, the second bail application is hereby rejected. However the trial Court is directed to expedite the trial and conclude the case as early as possible from the date of receipt of certified copy of this order.

9. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)
JUDGE

L/-