

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 855 of 2020**

Dinesh Patel, son of Shyam Kumar Patel, aged about 21 years, Caste Aghariya, R/o Village Durgapali, Police Station Saraipali, Tahsil Basna, District Mahasamund (CG).

---- Applicant**Versus**

State of Chhattisgarh, through Station House Officer, Police Station Saraipali, District Mahasamund (CG).

---- Non-applicant

For Applicant : Mr. Vikash Pradhan, Advocate
For Non-applicant : Mr. D.K. Tiwari, Dy.G.A.

Hon'ble Shri Justice Sharad Kumar Gupta
Order On Board

20.07.2020

1. Allegedly Informant Pardeshi Chauhan, who is the father of prosecutrix, is present in person before this Court. After putting some inquiries from him, this Court satisfied that the person, who is present before this Court is the informant.
2. This is the second bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court.
3. Perused the case diary provided by the counsel for the State in connection with Crime No.205/2019 registered in Police Station Saraipali, District Mahasamund for the offence punishable under Sections 363, 366 & 376 of Indian Penal Code, Sections 4 & 6 of the Protection of Children from Sexual Offences Act & Sections 3(2)5 of SC/ST (Prevention of Atrocities Act).
4. The first bail application of the applicant was rejected by this Court vide order dated 30.08.2019 passed in M.Cr.C. No.4076/2019 considering prima facie case against him.
5. Case of the prosecution, in brief, is that the 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 the pretext of marriage. Thereafter, he refused to marry her.

6. Counsel for the applicant submitted that as per para No.6 of certified copy of statement of prosecutrix (P.W.5) her date of birth is 11.12.2002, hence at the time of alleged incident she was not below 16 years of age. Therefore, the applicant may be released on bail.

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

8. Informant Pardeshi Chauhan submitted that the applicant may not be released on bail.

9. This is well settled legal principle that while dealing with the bail application, the Court can neither scrutinize the evidence nor appreciate the evidence. It is only the trial Court, who can do so at the time of appreciation of the evidence.

10. Looking to the entry of the Kotwari Register, prima facie, it appears that on 30.05.2019 prosecutrix was below 16 years of age.

11. Looking to the 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, his second bail application is rejected.

12. Certified copy as per rules.

SD/-
(Sharad Kumar Gupta)
JUDGE