

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No.1209 of 2020

Firoz Agariya S/o Ramdayal Agariya Aged About 20 Years R/o Village
Basantpur, Jamaie More, Police Station Basantpur, District Balrampur-
Ramanujganj, Chhattisgarh **----Applicant**

Versus

State Of Chhattisgarh Through- Station House Officer, Police Station-
Basantpur, District- Balrampur-Ramanujganj, Chhattisgarh

---- Respondent

For Applicant	:	Shri Arun Mishra, Advocate
For Respondent/State	:	Shri Alok Bakshi, Additional A.G.
For Objector	:	Shri Anup Agrawal, Advocate from the Help Desk of DLSA, Ramanujganj.

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

09/10/2020

Heard.

1. The applicant has been arrested in connection with Crime No.44 of 2019 registered at Police Station- Basantpur, District Balrampur-Ramanujganj (CG) for the alleged commission of offence under Section 376, 109 of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012.
2. Prosecution case is that the applicant committed rape on the prosecutrix on 13.03.2019. It is the case of the prosecution that on the date of incident, the prosecutrix was less than 13 years of age.
3. Learned counsel for the applicant submits that the allegation of commission of rape on the applicant is false and fabricated and the applicant has not committed any offence. He would further submit that there is delay of about 6 days in lodging FIR which renders the prosecution case doubtful. It is further submitted that the allegation is otherwise improbable because the incident is alleged to have happened when both the applicant and the prosecutrix were in attendance in a

marriage amongst large number of persons. According to learned counsel for the applicant, prosecutrix's age as recorded in the school register is not reliable because her father who has now been examined in the Court has stated that the age of the prosecutrix was declared only by a broad estimation and he is not very sure about the exact date of birth of his own daughter. Lastly, it is argued that number of witnesses of the prosecution including prosecutrix has also been examined but till date, trial has not been held. His next argument is that the applicant was arrested on 19.03.2019 and trial is not likely to be concluded early and therefore, at this stage, it is a case for grant of bail both on merits as well as on the ground of delay in trial.

4. On the other hand, learned counsel for the State submits that the prosecutrix has remained firm in all her statement including the evidence even in the Court that the applicant committed forcible sexual intercourse. He would submit that the date of birth as recorded in the school register has been proved by the Head Master and in the oral evidence also everyone including the prosecutrix has clearly stated regarding prosecutrix being minor. He would further argue that though there is delay in trial, it is not because of any lapse only on the part of the prosecution but it is because of pandemic situation that the trial could not be concluded till date as trial is not taking place. He would further argue that delay in lodging FIR has been explained in the FIR itself. Lastly, it is submitted that as the offence is heinous one because of allegation of rape is on a minor girl, who was even less than 13 years, only on the ground of delay in trial, the applicant may not entitle to grant of bail when there is minimum sentence of 10 years provided under the law in cases where the allegation of rape is on a minor girl below 16 years.
5. There is objection to grant of bail by learned counsel for the Informant also.
6. I have heard learned counsel for the parties.
7. Present is a case where the allegation is of commission of offence of rape on a minor girl and according to the prosecution, the age of the girl was less than 13 years on the date of alleged commission of offence.
8. Though, at this stage, evidence which has already been led before the

trial Court cannot be appreciated but it is not a case where the prosecutrix has turned hostile and has not supported the allegation of commission of rape on her while deposing in the Court. Whether or not evidence should be believed is a matter of appreciation but the evidence is there. As far as age is concerned, prosecution has come out with the entry made in the school register. On this aspect also, the evidence requires appreciation by the trial Court. This Court also found that the medical report is not quite definite but the prosecutrix has stated regarding commission of offence of rape on her in diary statement as well as under Section 164 Cr.P.C. as also in the evidence before the Court. The law prescribes strict punishment of minimum 10 years where the offence of rape is on a minor less than 16 years.

9. The other side of the case is that the applicant has also remained in jail since 19.03.2019 and by now has completed 1½ years in jail during trial. It is common knowledge that at present, trial is not taking place because of pandemic situation though in the present case, number of prosecution witnesses including prosecutrix have been examined and once the trial commences, the trial is likely to be concluded early.
10. Taking into consideration the totality of the circumstances, nature and gravity of allegation, material on the basis of which it is sought to be proved and also taking into consideration the period of detention of the applicant, particularly taking into consideration that the offence is a grave one at this stage, I am not inclined to grant bail to the applicant and accordingly, the bail application is rejected. However, in case, there is further delay in trial and there is no likelihood of early conclusion, the applicant would be at liberty to revive his case for bail after 3 months. The application is therefore rejected at this stage. Liberty is granted to revive the application only on the ground of delay in trial and trial having remained in concluded despite lapse of 3 months from today.

Sd/-
(Manindra Mohan Shrivastava)
Judge