

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No.423 of 2020**

Arvind S/o Reshamlal Goyal Aged About 29 Years R/o Village
Bhikhampur, Police Station Nandghat District Bemetara Chhattisgarh,
---- **Applicant**

Versus

1. State Of Chhattisgarh Through The Station House Officer, Police
Station Nandghat District Bemetara Chhattisgarh,
2. Rukhmani Bai W/o Tularam Satnami Aged About 45 Years R/o Village
Dhabapar, Police Station Nandghat District Bemetara Chhattisgarh,

---- **Respondents**

For Applicant	:	Mr. Sanjeev Kumar Sahu, Advocate.
For Respondent/State	:	Mr. Vimlesh Bajpai, G.A.
For Objector	:	Mr. Bharat Rajput, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

24/06/2020

Heard.

1. The applicant is apprehending his arrest in connection with Special Criminal Case No.11/2020 of Additional Sessions judge, Fast Track Court Special Court (POCSO Act), District Bemetara, for the offence punishable under Section 342, 363, 366 of IPC and Section 8, 12 of Protection of Children from Sexual Offence Act, 2012, in view of order dated 22.02.2020 of the Special Judge (POCSO) District Bemetara (CG) taking cognizance for commission of offence under Section 376 read with Section 5 & 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'the POCSO Act').
2. Prosecution allegation is that the applicant misled the prosecutrix, a minor, that he would be marrying with her and on this assurance, he kept on sexually exploiting the minor prosecutrix.

3. Learned counsel for the applicant submits that as far as allegation of commission of offence under Section 376 IPC read with Section 5 & 6 of the POCSO Act is concerned, the same is an afterthought allegation. He would submit that initially, an FIR filed against the applicant in respect of the same allegation offences under Section 342, 363, 366 of IPC read with Section 8 & 12 of the POCSO Act was registered under crime No.166 of 2019. In that case, the prosecutrix and her parents refused medical examination of private parts of the prosecutrix stating that no sexual act was committed on the prosecutrix. During investigation, 161 Cr.P.C. statement of the prosecutrix also did not come out with any allegation of commission of sexual intercourse/ rape on the prosecutrix. It is submitted that later on, a complaint was lodged by mother of the prosecutrix now, levelling an allegation that the prosecutrix was subjected to rape by the applicant and despite specific report in this regard given in the police station, offence under Section 376 of IPC was not registered. Special Judge, vide order dated 22.02.2020 has now taken cognizance directing registration of offence under Section 376 IPC read with Section 5 & 6 of the POCSO Act. He would submit that this is a clear case of false implication on afterthought ground.

4. On the other hand, learned counsel for the State and Objector would submit that even when the first FIR was registered in the police station, there were clear allegation that the applicant was sexually exploiting the prosecutrix. He would submit that, though, the prosecutrix was subjected to rape, initially, the report regarding commission of rape was not made because there was assurance of solemnization of marriage. Later on, the applicant did not accept marriage and contacted marriage with another girl, therefore, true facts and allegations were disclosed by filing a complaint before the Special Judge, who has taken cognizance after taking into consideration all the preliminary statement of the prosecutrix and other witnesses.

5. On prima facie consideration, from the material on record, what has been disclosed by learned State counsel on the basis of contents of case diary, it is revealed that initially when an FIR was lodged against the applicant under Crime No.166/2019, there were allegations that the applicant had misled the prosecutrix and prosecutrix was subjected to sexual exploitation. However, in that case, during investigation, the offences under Section 342, 363, 366

read with Section 8 & 12 of POCSO Act were registered because at that time, the prosecutrix and her parents refused for medical examination of the prosecutrix by stating that no sexual intercourse was committed with the prosecutrix. In case diary statement also, there was no allegation of commission of sexual intercourse by the applicant, though, there were allegation of kidnapping and wrongful confinement. In that case, the applicant was later on, granted bail.

6. However, later on, the mother of the prosecutrix, Rukmani Kurre, filed a complaint case, now making an allegation of commission of offence of rape on the prosecutrix. Learned counsel for the applicant has also placed on record the copy of the complaint, order sheets of the Special Case taking cognizance on 22.02.2020 as also the copy of preliminary statement recorded before taking cognizance. From the perusal of the same, particularly, the statement of the prosecutrix there is no specific statement of the prosecutrix even in the complaint that she was subjected to sexual intercourse.

7. Therefore, there is considerable force in the submission of learned counsel for the applicant that as far as allegation of commission of offence under Section 376 of IPC read with Section 5 & 6 of POCSO Act is concerned, it is an afterthought and fabricated story.

8. In view of the above prima facie consideration reflected from the records of the case, I consider present it to be a fit case for grant of anticipatory bail to the applicant. Accordingly, the application is allowed.

9. Accordingly, it is directed that in the event of arrest of the applicant in connection with the aforesaid offence, he shall be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- along with one local surety for the like amount to the satisfaction of the arresting officer and the applicant shall abide by all the following terms and conditions -

- (i) that the applicant shall make himself available for interrogation by a Police Officer as and when required;
- (ii) that he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any Police Officer.

(iii) that he shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and

(iv) that he shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

Certified copy as per rules.

Sd/-

(Manindra Mohan Shrivastava)

J U D G E

Rekha