

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 3571 of 2020**

- Nagendra Sonwani S/o Lalit Sonwani Aged About 29 Years R/o Bebdi, Police Station Raghunath Nagar, Police Chowki, Balangi, District Balrampur Ramanujganj Chhattisgarh

---- Applicant**Versus**

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

---- Respondent

For Applicant	:	Shri Pushpendra Kumar Patel, Advocate
For State	:	Shri Alok Bakshi, Addl. A.G.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****17/09/2020**

Heard.

1. The applicant has been arrested in connection with Crime No.139/2019 registered at Police Station – Basantpur, District – Barampur - Ramanujganj (C.G.) for alleged commission of offences under Section 376 of IPC and Section 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act').
2. Prosecution case is that the applicant committed rape on the prosecutrix who is stated to be less than 16 years of age.
3. Learned counsel for the applicant would argue that present is a case of consent. He would submit that the applicant and the prosecutrix had an affair. He would further submit that the prosecutrix is willing to reside with the applicant and the applicant also is having an affair. Therefore, at this stage, when the investigation is complete, charge sheet has been filed, the applicant may be granted bail.
4. On the other hand, learned State counsel opposes prayer by submitting that

as per the charge sheet, the age of the prosecutrix is less than 16 years. He would submit that the consent is immaterial as the prosecutrix is a minor. Further submission is that the prosecutrix, due to sexual intercourse became pregnant and also gave birth to a child which makes out a clear *prima facie* case of commission of offence under Section 376 IPC as well as under Section 4 and 6 of the POCSO Act.

5. Pursuant to the notice issued by this Court, the prosecutrix along with her mother is present through Help Desk of the High Court and she has stated that she is willing to marry and reside with the applicant as the child is borne out of her relation with the applicant.

6. On *prima facie* considerations, the prosecutrix is less than 16 years of age as per the documents annexed along with the charge sheet. Therefore, the consent is immaterial. *Prima facie*, the prosecutrix conceived out of the sexual relation with the applicant and then gave birth to a child also.

7. Taking into consideration the aforesaid submission, particularly, taking into consideration the age of the prosecutrix and that she also became pregnant and delivered a child and that consent would not be material to absolve the applicant of offence against a minor, present is not a case of grant of bail. The bail application is accordingly rejected.

8. Before parting with the case, it has become necessary to issue proper guidelines with regard to appearance of the informant / authorised person as mandated under Section 439 (1) A of CrPC in cases covered under that provision. So far, no specific rules have been framed with regard to service of notice on the informant / representative. This Court has been issuing notices to the informant / representative for being served through concerned Station House Officer of police station where crime has been registered through controlling Superintendent. It has been found that when the notices are served on the informant / representative/ prosecutrix, sometimes they engage a counsel to represent their case but many a times, it has been found that due to lack of proper legal assistance and advice to the prosecutrix or her parents / informant / representative, they are appearing personally through video conferencing to participate in the hearing of bail applications and many a times, prosecutrix / informant / representative are required to undertake journey from their place of residence to either the Help Desk of the District Services Authority of the area or many a times they have to travel up to Bilaspur where the High Court is situated and appear through the Help Desk. Present is one such case

where due to lack of proper advice, the prosecutrix came all the way from Balrampur along with her minor child and her mother in response to notice issued. In this pandemic situation, it is not only hazardous to her health but also to her minor child and mother who is accompanying her. This could be avoided, had she been provided legal aid.

9. Therefore, it has become imperative to issue guidelines till appropriate rules are framed in this regard so as to ensure that the informant / representative / prosecutrix is able to represent his / her case during hearing of bail petitions.

10. It is directed that whenever memo / notice is issued by the Registry, the notice shall clearly state that it is not necessary for the informant / authorised person to appear personally and they may engage a counsel to represent their case by appearing through video conferencing. Further, the notice shall also state that if they are not able to engage a counsel, they may get the help of the concerned District Legal Services Authority. A copy of memo / notice shall be endorsed to the concerned District Legal Services Authority and the District Legal Services Authority shall provide legal aid to the informant / authorised person where they are not in a position to engage a counsel. A situation like the present one shall be avoided. These guidelines shall prevail until appropriate rule in this regard are framed by the competent authority under the law. A copy of this order be sent to the Secretary, Chhattisgarh State Legal Services Authority, Secretary of all the District Legal Services Authorities of the State, all the Superintendent of Police in the State for necessary compliance and coordination. The concerned office of Superintendent of Police and Station House Officer of the concerned police station shall also ensure that the prosecutrix is not driven in the manner as has happened in the present case when she was required to come all the way from Balrampur to Bilaspur because a notice was issued to the informant under the mandate of Section 439 (1) A of CrPC.

Learned Additional Adv. Gen. shall also communicate a copy of this order to the Secretary, Home (Police) for issuing necessary guidelines and directives for effective implementation through the concerned Superintendent of Police.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge