

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 4211 of 2020**

- Sudhir Kumar Paswan S/o Harendra Kumar Paswan Aged About 21 Years R/o Nehru Nagar, Kosa Nala, Bhilai, District Durg Chhattisgarh

---- Applicant**Versus**

- State Of Chhattisgarh Through District Magistrate District Durg Chhattisgarh

---- Respondent

For Applicant/s : Mr. Avinash Chand Sahu, Advocate.

For State : Mr. Alok Bakshi, Additional A.G.

None for complainant/prosecutrix/informant despite service of notice.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****15/09/2020**

Heard.

1. The applicant has moved this application for grant of bail as he is arrested in connection with Crime No.313/2020 registered at Police Station-Durg, District Durg, C.G. for the alleged commission of offence under Sections 363, 366, 376 & 506 of IPC and 6 of POCSO Act.
2. Prosecution case is that the applicant committed rape on the prosecutrix on two occasions. According to the prosecution, prosecutrix is a minor.
3. Learned counsel for the applicant would argue that the allegation of commission of rape alleged to have been committed on 5th and 7th of January, 2020, has been reported after about 4 months vide FIR dated 21.05.2020 and contents of the FIR, diary statement and statement under Section 164 Cr.P.C. only reveal that prosecutrix out of anger and vengeance got the report lodged on 21.05.2020 and that she was not interested in pursuing the report. It is also argued that it is a case out of affair between the applicant and the prosecutrix and the allegations of commission of rape are false and afterthought as it is

not even supported by medical examination of the prosecutrix.

4. On the other hand, learned State Counsel opposes and submits that consent of the prosecutrix, if any, is wholly immaterial because prosecution document shows that the prosecutrix is less than 18 years and minor. He would submit that the prosecutrix has clearly stated that she was subjected to rape twice in the month of January and on 19.05.2020, she was also abducted by the applicant and was taken to his own house. He would further submit that whether the allegation of the prosecutrix should be discarded on the ground of delay is a matter to be considered at the time of trial.
5. On *prima facie* consideration, the applicant does not admit any relationship but denies sexual intercourse. According to the prosecutrix, she was subjected to sexual intercourse on 5th and 7th of January, 2020 but the FIR has been lodged after about 4 months only on 21.05.2020. Further a doubt has been raised on the allegation of sexual intercourse on the face of the medical report. The contents of statement under Section 164 Cr.P.C. read over by learned State Counsel shows that the prosecutrix has stated that when marriage could not materialise, out of an anger and vengeance, she lodged the report.

As investigation is also complete and charge sheet has been filed, in view of above, present is a fit case for grant of bail to the applicant.

6. Accordingly, the bail application is allowed. It is directed that the applicant shall be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- along with one local surety of the like amount to the satisfaction of the Trial Court on the condition that-
 - a) He shall appear before the Trial Court regularly on each and every date, unless exempted from appearance.
 - b) He shall not in any manner, tamper with the prosecution witnesses.

Certified copy as per rules.

Sd/-
(Manindra Mohan Shrivastava)
Judge