

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 4599 of 2020**

- Nandu Kumar Bhuinyan S/o Bifanram Bhuinyan Aged About 21 Years R/o Chaki, Police Chowki Vijaynagar, P.S.- Ramanujganj, District- Balrampur-Ramanujganj, (C.G.)

---- Applicant**Versus**

- State Of Chhattisgarh Through Police Station- Balrampur, District- Balrampur-Ramanujganj (C.G.)

---- Respondent

For Applicant	:	Shri Arun Shukla, Advocate
For State	:	Shri Ravish Verma, Govt. Adv.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****18/09/2020**

Heard.

1. The applicant has been arrested in connection with Crime No.103/2018 registered at Police Station – Balrampur, District – Balrampur Ramanujganj (C.G.) for alleged commission of offences under Section 363, 366 A, 376 (2)(n) of IPC and Section 4, 6 of the Protection of Children from Sexual Offences Act, 2012.
2. Prosecution case is that the applicant committed rape on the prosecutrix who is stated to be minor in age.
3. Learned counsel for the applicant would submit that the applicant has been falsely implicated. The prosecutrix never alleged against the applicant including in the statement under Section 164 CrPC. He would further submit that the prosecutrix had already now been examined in the Trial Court and she has turned completely hostile and has not made any allegations whatsoever against the present applicant. Therefore, at this stage, when the most important witness of the prosecution has been examined, the applicant may be granted bail.

4. On the other hand, learned State counsel submits that the case diary is not available. He further submitted that till prosecutrix is stated to be less than 10 years, a notice to informant would also be necessary to be issued in view of provisions contained in Section 439 (1A) of CrPC.

5. I have heard learned counsel for the parties.

6. Section 439 (1A) Cr.P.C. provides for grant of opportunity to the informant/representative where the accused is alleged to have committed offence/any of the offence specified therein and one of them is an allegation of commission of offence under Section 376 (3) IPC where the prosecutrix is less than 16 years of age.

7. In the present case, the notice on the prosecutrix/informant has not been served, but the main ground on which the prayer for grant of bail is being made is that now the prosecutrix herself has been examined in the Court and her Court statement has also been placed on record. It is not a case where the prosecutrix has stated anything against the present applicant to indicate that prosecutrix would be having any objection. The statement made before the Court, read as it is, without any appreciation, is that nothing happened to her. Therefore, in such an extraordinary situation where the prosecutrix has been examined in the Court prior to decision of bail application and there she turned completely hostile and does not give any evidence of commission of rape on her much less by the accused who is praying for grant of bail, there would be no impediment in granting bail even if the informant/representative is not present at the time of hearing of application for grant of bail. In the circumstances of the case, particularly taking into consideration that the prosecutrix has been examined and submission of learned counsel for the applicant that she has not supported the prosecution case and the prosecutrix has turned hostile stating that applicant did not commit any offence and she has not been subjected to any rape, application is being considered.

8. In the present case, the applicant has placed on record a copy of deposition of the prosecutrix. On the face and physical reading of the said document, the prosecutrix has not made any allegation whatsoever against the applicant nor has alleged commission of any sexual intercourse or even abduction. In view of above observation, I am inclined to grant bail to the applicant.

9. Accordingly, the 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 for 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 make any attempt to tamper with the prosecution witnesses.

Certified copy as per rules.

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

Deepti