

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 4765 of 2020

Dinesh Ram S/o Nirmal Ram Aged About 24 Years Caste Nagesia, R/o Village Kalaro, Tehsil Manora, District Jashpur Chhattisgarh, District : Jashpur, Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through The Station House Officer, Police Station Jashpur, District Jashpur Chhattisgarh, District : Jashpur, Chhattisgarh

---- Respondent

For Applicant	:	Ms. Sharmila Singhai, Advocate
For State	:	Mr. Ravish Verma, Govt. Advocate

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

Order On Board

16/09/2020

Heard.

1. The applicant is arrested in connection with Crime No.204/2019 registered in Police Station – Jashpur Nagar, District- Jashpur (CG) for alleged commission of offence under Section 376 IPC and Sections 4 & 6 of the Protection of Children from Sexual Offences Act 2012.
2. Case of the prosecution, in brief, is that the applicant abducted and raped the prosecutrix who is a minor.
3. Learned counsel for the applicant argues that the applicant was falsely implicated. The prosecutrix, her father and mother all have been examined in the Court and none of them has supported the prosecution case. They have turned hostile so much so that the prosecutrix stated that nothing happened to her. Therefore, at this stage, the applicant may be granted bail without further awaiting service of notice on the complainant.

4. On the other hand, learned counsel for the State opposed the bail application by submitting that the nature of allegations against the applicant are grave. He further submits that the appreciation of evidence led before the Court is not permissible at the stage of grant of bail. He would lastly submit that the provisions contained in Section 439 (1A) Cr.P.C. are mandatory that in cases of commission of offence under Section 376 (3) IPC, presence of informant or representative would be obligatory.
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. Her parents have also been examined. 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, her father and mother all have been examined and submission of learned counsel for the applicant that none of them has 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, the application is allowed.

8. 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 concerned trial Court with following further conditions:-

(i) The applicant shall not act in any manner which will be prejudicial to fair and expeditious trial; and

(ii) The applicant shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

9. It is made clear that the bail is being granted without awaiting service of notice on informant/representative in an extraordinary circumstances stated in the case and it should not be taken as statement of law of universal application in all the cases.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen