

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 4857 of 2020**

- Vikram Singh Son of Rajesh Singh Aged About 19 Years R/o Village Kenwari, Police Station Lakhanpur, District Surguja Chhattisgarh

---- Applicant**Versus**

- State Of Chhattisgarh Through The Station House Officer, Police Of Police Station Jainagar, District Surajpur Chhattisgarh

---- Respondent

For Applicant/s	:	Mr. Anil Gulati, Advocate.
For State	:	Mr. Alok Bakshi, Additional A.G.

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

Heard.

1. The applicant has moved this application for grant of bail as he is arrested in connection with Crime No.264/2019 registered at Police Station- Jainagar, District-Surajpur, C.G. for the alleged commission of offence under Sections 376 (3) & 376 (2) (ब) of IPC and 4 & 5 (ब) of POCSO Act.
2. Prosecution case is that the applicant abducted the prosecutrix and committed rape on her, prosecutrix is a minor.
3. Learned counsel for the applicant would argue that he has been falsely implicated and he has not committed any offence. He would submit that the prosecutrix has now been examined in the Court and in her Court evidence, she has not supported the case of the prosecution and turned completely hostile. She has neither stated regarding abduction nor commission of offence of rape. Therefore, at this stage, when most important witness of the prosecution namely prosecutrix has been examined, the applicant may be granted bail.
4. On the other hand, learned State Counsel opposes and submits that offence is

of grave nature and trial is still going on and many other witnesses are yet to be examined. He would further submit that evidence of the witnesses is a matter of appreciation during trial. He would submit that the informant has also not been served till now. Therefore, the application may be rejected.

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 mother has 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 and her mother 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. 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.
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

Ravi