

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 5101 of 2020**

Mukesh Nath Yogi S/o Ganpath Nath Yogi, Aged About 36 Years R/o Near Shriram Mandir Near Kalika Mandir Chilled Water, Indorma, Police Station Pathampur, District Dhar (Madhya Pradesh). **---- Applicant**

Versus

State of Chhattisgarh Through The Station House Officer, Bemetara, P.S. Bemetara, District Bemetara (As Per Chargesheet) Chhattisgarh.

---- Respondent

For Applicant	:	Shri Hari Om Rai, Advocate
For State	:	Shri Alok Bakshi, Addl. A.G.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****24/09/2020**

1. Heard on application for grant of bail.
2. The applicant has been arrested on 23.09.2018, on the allegation of having committed offence under Section 363, 376, 366(A) of I.P.C. & 5(३)/6 of POCSO Act. He moved this application for grant of bail in connection with Crime No.399/2018 registered at Police Station- Bemetara, District- Bemetara (C.G.).
3. Prosecution case is that the applicant abducted and brought the prosecutrix to his place at Indore and there he committed rape on her by treating the prosecutrix as wife. According to the charge sheet, on date of incident the prosecutrix was less than 18 years of age.
4. Learned counsel for the applicant would argue that the prosecutrix has now been examined in the Court and many other witnesses including her father have also been examined. Counsel for the applicant further submits that the statement of the prosecutrix shows that the applicant and the prosecutrix had an affair and the prosecutrix of her own, had gone along with the applicant and

the applicant married her and allegation of sexual intercourse is only subsequent to that. He further submits that though the prosecution has come out with the documentary evidence of school record showing date of birth 15.06.2002, the evidence of the prosecutrix in the Court renders the same highly doubtful and according to her statement, on the date she eloped with the applicant i.e. on 02.08.2018, she not only completed 18 years of age but it was so declared by her to the applicant. The father of the prosecutrix has also been examined and his statement also shows that the date of birth recorded in the school is only on estimation and that to not by the father but by the uncle who has not been examined till date.

5. Learned counsel for the applicant would further submit that the applicant is in jail since 23.09.2018 and till date trial has not been concluded though he has completed three years of detention during trial. The prosecutrix has stated in her Court Statement that the applicant is a handicapped person whose right hand is amputated, therefore, in these circumstances at this stage, when trial is not completed nor likely to be concluded early, he may be granted bail.
6. On the other hand, learned State Counsel opposes the prayer for grant of bail and submits that the documentary evidence in the charge-sheet is school Dakhil Kharij Register in which date of birth of the prosecutrix is shown to be 15.06.2002 and therefore, on the date when prosecutrix was taken away by the applicant i.e. on 02.08.2018, the prosecutrix was clearly less than 18 years of age and therefore, consent, if any, is wholly immaterial. It is also submitted that the offence is grievous in nature and all the prosecution witnesses have not been examined till date. The prayer of bail application is liable to be rejected even though the trial is not concluded till date.
7. I have heard learned counsel for the parties and on prima facie consideration, it is found that the applicant and the prosecutrix had an affair and according to the prosecution case, the prosecutrix went along with the applicant. Whether on that day the prosecutrix was major or minor is a matter of examination of the evidence on record by the trial Court. The submission of learned counsel for the applicant, based on reading of evidence of the prosecutrix and her father is a matter of appreciation at the stage of trial. However, taking into consideration, the totality of the circumstances, particularly taking into consideration that the applicant is in jail since 23.09.2018 and prosecutrix

have now been examined and also the submission that the applicant has an arguable case with regard to the age of the prosecutrix that she was major or minor on 02.08.2018 and further considering the argument that the applicant is appears to be a handicapped person, it is a fit case for grant of bail.

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/- with two local sureties 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) The applicant shall not in any manner, tamper with the prosecution witnesses.

Certified copy as per rules.

Sd/-
(Manindra Mohan Shrivastava)
Judge