

**HIGH COURT OF CHHATTISGARH, BILASPUR****MCRC No. 5369 of 2020**

- Motu Badde S/o Poriya Badde Aged About 25 Years Caste Muriya R/o Nayapara Village Jaivaram, Police Station Jangala, District : Bijapur, Chhattisgarh

---- Applicant

**Versus**

- State Of Chhattisgarh Through Police Station Jangla, District : Bijapur, Chhattisgarh

---- Respondent

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|---------------|---|--------------------------------------------------------------------------------------------------------------------------|
| For Applicant | : | Mr. Vikas A. Shrivastava, Advocate.                                                                                      |
| For State     | : | Mr. Ravish Verma, G.A.                                                                                                   |
| For Objector  | : | Ms. Sanni Moriyami, mother of the prosecutrix is present through video conferencing from the Help Desk, DLSA, Dantewada. |

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**Hon'ble Shri Justice Manindra Mohan Shrivastava****Order On Board****19/10/2020**

Heard.

1. The applicant has moved this application for grant of bail as he is arrested in connection with Crime No.22/2018 registered at Police Station- Jangla, District : Bijapur, C.G. for the offence under Sections 376 & 450 of IPC and Sections 4 & 6 of POCSO Act.
2. Prosecution case is that the applicant committed rape on the prosecutrix on 21.05.2018.
3. Learned counsel for the applicant would submit that the applicant has been involved only on the basis of suspicion. He would submit that though at the time of filing of report, name of the applicant is stated in the FIR and in other statements but when the prosecutrix was examined in the Court, she has stated that she is involving the applicant only due to his voice though she could not see the face of the person who committed rape on her. It is next submitted that even DNA test has not been conducted. He would also submit that the applicant is in jail since 08.10.2018 and till date, trial has not been

concluded, therefore, at this stage, when important witnesses like prosecutrix and 6 other witnesses including mother and sister have been examined, the applicant may be granted bail.

4. On the other hand, learned State Counsel opposes and submits that as per prosecution case, date of birth of the prosecutrix is 16.08.2008, which shows that on the alleged date of incident, prosecutrix was about 10 years of age. He would submit that in the FIR and all the statements in the case, the name of the applicant has been clearly stated and whether or not the evidence of the prosecutrix could be relied upon with regard to identification of the accused, is a matter of appreciation during trial.
5. Ms. Sanni Moriyami, the mother of the prosecutrix, who appeared through video conferencing stated that they are willing to compromise.
6. On *prima facie* considerations, it is found that when the FIR was filed and statements under Sections 161 and 164 of the Cr.P.C. were recorded, the applicant was involved as an accused in the case. The prosecutrix has examined in the trial Court and she has identified the applicant from his voice though she claims that she could not see the face, therefore, it cannot be said that it is a case of no evidence. As far as ground of delay in trial is concerned, this Court finds that the applicant is in jail since 08.10.2018 and two years have been elapsed and till date, trial has not been concluded.
7. Considering the nature and gravity of allegation on one side and the period of detention on the other, I am of the opinion that in the present case, at present bail cannot be granted. However, in case, trial does not commence or concluded within three months, it would be open for the applicant to revive bail application only on the ground of delay.
8. The bail application is accordingly rejected.

Sd/-

(Manindra Mohan Shrivastava)  
Judge