

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No.5553 of 2020**

- Anand Ram Mandavi S/o Kapurchand Kashyap Aged About 21 Years
Caste Mahara, R/o Vill. Kumhali Chihalaguda Para, P.S. Badanji, District-
Bastar, (C.G.), District : Bastar(Jagdalpur), Chhattisgarh

---- Petitioner**Versus**

- State Of Chhattisgarh Through P.S.- Badanji, Distt.- Bastar, (C.G.),
District : Bastar(Jagdalpur), Chhattisgarh

---- Respondent

For Applicant : Shri Vikash Shrivastava, Advocate
 For Respondent/State : Shri Ravish Verma, GA
 Shri Anil Bajpai, counsel for informant through Help Desk of District Legal
 Services Authority, Bastar at Jagdalpur

Single Bench: Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****09/10/2020**

Heard.

1. The applicant has moved this application under Section 439 of the Cr.P.C. for grant of regular bail in connection with Crime No.40/2019 registered at Police Station Badanji, District Bastar for the offence punishable under Section 363, 366, 376, 506, 34 & 109 of the IPC and Section 6 of POCSO Act . The applicant was arrested on 13-12-2019.
2. Prosecution case is that the present applicant along with other co-accused abducted the prosecutrix and committed rape on her by keeping her in captivity for 10 days from 16-11-2019 to 26-11-2019, till the prosecutrix was came back to her residence and informed about the incident to her mother.
3. Learned counsel for the applicant would submit that in the present case, the prosecutrix, her father and the school authority being custodian of the school records relating to age, have been examined. He would submit that the prosecutrix has admitted in her cross-examination that she stayed with the applicant for 10 days and both of them used to go for agricultural work, but she has never disclosed to anybody regarding she being kept by the applicant, which clearly shows that the applicant and the prosecutrix are consenting

parties and the prosecutrix statement that she was taken by the applicant to different places through public transportation and she never raised any objection also clearly shows that the applicant and the prosecutrix are consenting parties. He further submits that as far as age of the prosecutrix is concerned, the prosecution witnesses, PW-8, father of the prosecutrix admits that while getting her daughter admitted in the school, she has not disclosed date of birth of the prosecutrix or her age, but only her name was recorded and date of birth of the prosecutrix was recorded by the school authority on their own estimation. He has also admitted that when his daughter was admitted in the First standard, she was eight years of age, which clearly shows that the prosecutrix was major not minor on the date of alleged commission of offence. Therefore, at this stage, the applicant may be granted bail as he has remained in jail since 13-12-2019 and till date, the trial has not been concluded.

4. On the other hand, learned counsel for the State/non-applicant as well as learned counsel for the Objector opposes the bail application by submitting that as per the school records, date of birth of the prosecutrix is 25-10-2004 meaning thereby, on the date of alleged commission of offence, the prosecutrix was minor in age, therefore, consent is immaterial. It is also argued at this stage that the applicant is not entitled to bail on appreciation of evidence led before the trial Court. It is also argued that the prosecutrix has clearly stated that she was kept in captivity for 10 days, during which period, she was subjected to sexual intercourse.

5. On prima facie consideration, it is found that the prosecutrix, her father and school authorities have already been examined by the trial Court and the evidence with regard to age and consent, both are subject matter of appreciation by the trial Court. However, taking into consideration the submission of learned counsel for the applicant by drawing attention of this Court on various statements made in the cross-examination of the prosecutrix, her father as also by the school authorities, there is considerable force in the arguments on the aspect of consent and age of the prosecutrix. Therefore, at this stage, when the applicant has remained in jail since 13-12-2019 and important prosecution witnesses namely prosecutrix, her father and the school authorities have already been examined, I am inclined to enlarge the applicant on bail.

6. Accordingly, the application is allowed. It is ordered that the applicant shall be released on bail on furnishing a personal bond of Rs.25,000/- along

with one local surety of the like amount to the satisfaction of the concerned trial Court on the condition that he shall appear before the trial Court regularly on each and every date of hearing, unless exempted.

Certified copy as per rules.

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