

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C. No. 7606 of 2020**

Durgesh Sahu, S/o Shri Krishna Sahu, Aged About 25 Years R/o Village Temri, Police Station City Kotwali, Mungeli, District Mungeli Chhattisgarh.

---- Applicant**Versus**

State Of Chhattisgarh Acting Through Officer - In - Charge Police Station - City Kotwali, Mungeli, District - Mungeli, Chhattisgarh.

---- Respondent

For the Applicant : Shri Lukesh Kumar Mishra, Advocate.
For the Respondent/State : Shri Ghanshyam Patel, G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****11.12.2020**

Heard.

1. This is the second bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicant. His earlier bail application i.e. M.Cr.C. No. 2480 of 2019 was dismissed as withdrawn on 24.6.2019 and liberty was granted to the applicant to file a repeat application after examination of the prosecutrix in trial. The applicant was arrested in connection with Crime No.504 of 2017, registered at Police Station – City Kotwali, Mungeli, District – Mungeli, Chhattisgarh for the offence punishable under Sections 366(a), 376, 109, 372 and 506 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.

2. Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in this case. He is in jail since about three years. The prosecutrix has been examined in the trial although, she is not a hostile witness but she has made admissions in her cross-examination which substantially affect the case of the prosecution. It is submitted that the applicant and the prosecutrix both had an affair which was discovered by the parents of the prosecutrix and then they threatened to lodge false FIR regarding which, a complaint was made to the police on 28.10.2017. The copy of the same has been filed as Annexure-A/4. It is submitted that co-accused Santoshi Sahu has been granted bail by this Court in M.Cr.C. No.1603 of 2019 vide order dated 20.3.2019. It is further submitted that according to the material present in the charge-sheet, there is no ground to presume regarding commission of offence under Sections 29 and 30 of the Protection of Children from Sexual Offences Act, 2012. Reliance has been placed in the judgment of Supreme Court in the case of **Reverend Mother Marykutty vs. Reni C. Kottaram and Another** reported in **(2013) 1 SCC 327** and it is also submitted that the case against the applicant is totally concocted and he may be granted bail.

3. On the other hand, learned counsel for the State opposes the bail application and the submissions made in this respect. It is submitted that the applicant has no entitlement for grant of bail. The deposition of the prosecutrix on which the applicant is relying, cannot be appreciated at this stage. The prosecutrix has supported the prosecution in her examination-in-chief, therefore, under these circumstances, the applicant is not entitled for grant of bail.

4. In reply, it is submitted by counsel for the applicant that in the matter of reading the deposition of any witness, the whole deposition has to be read i.e. examination and the cross-examination for reaching to any conclusion.

5. Heard counsel for both the parties and perused the case diary.

6. The prosecution story is that the father of the prosecutrix – aged 16 years, was away to earn his livelihood, then the mother of the prosecutrix developed the illicit relation with this applicant. It is alleged that this applicant then compelled co-accused – Santoshi Sahu, mother of the prosecutrix to facilitate for submission of the prosecutrix for satisfying his lust in which she co-operated and the applicant forcefully raped the minor prosecutrix. It is alleged that the applicant raped the minor prosecutrix on other occasions also regarding which, FIR has been lodged.

7. Considered the submissions. On perusal of the deposition of the prosecutrix which has been filed in support of the applicant, it is found that she has fully supported the prosecution case. The reliance of the applicant's counsel on the statement of the prosecutrix stated in her cross-examination, is matter of appreciation by the trial Court to draw conclusion whether the prosecutrix is reliable witness or not, therefore, this cannot be done for the purpose of granting bail to an accused. For the present, it is enough that the prosecutrix is not a hostile witness. As regards, grant of bail to co-accused – Santoshi Sahu, it can be viewed that the case of the co-accused is not the same as compared to the case against this applicant. Hence, for these reasons, I do not feel inclined to grant bail to the applicant in this case.

8. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is rejected.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi