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HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 683 of 2020

- Ishan Sen @ Aeman Sen S/o Ganeshram Sen, Aged About 17 Years Through Natural Guardian Father Ganeshram Sen, S/o Rewaram Sen, R/o Harinagar, Durg, Police Station Mohan Nagar, Tahsil and District Durg Chhattisgarh., District : Durg, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh, Through the District Magistrate, Durg, District Durg Chhattisgarh., District : Durg, Chhattisgarh

---- Non-applicant

MCRC No. 7367 of 2020

- Akash Goswami S/o Ramnarayan Goswami, Aged About 19 Years, R/o Katulboard, Choubey Kirana Shop, Ward No.59, Police Station Mohan Nagar, Durg, Tahsil and District Durg (Chhattisgarh), District : Durg, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through - Station House Officer Police Station Mohan Nagar, Durg, District - Durg (Chhattisgarh), District : Durg, Chhattisgarh

---- Non-applicant

For Applicant – Shri Praveen K. Dhurandhar, Advocate (in CRR No.683 of 2020),
Shri S.K. Agrawal, Advocate (in MCRC No.7367 of 2020).

For Non-applicant/State – Shri Gurudev I. Sharan, Govt. Advocate.
Shri Amit Singh Chauhan, Advocate for the complainant.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order on Board

15-12-2020

1. As both these petitions arise out of the same crime number, they are being decided by this common order.
2. CRR No.683 of 2020 has been filed against the order dated 08-10-2020 passed in Criminal Appeal No.119/2020 by the Additional District and Sessions Judge, Second Fast Track Special Court (POCSO Act), Durg District Durg, Chhattisgarh dismissing the appeal filed by the juvenile in conflict with law (applicant in CRR No.683 of 2020) and upholding the order of bail rejection passed by the Juvenile Justice Board.

Applicant Akash Goswami has filed MCRC No.7367 of 2020 under Section 439 of the Cr.P.C. which is his first application before this Court for grant of regular bail as he has been arrested on 07-08-2020 in connection with Crime No.242/2020 registered at P.S. – Mohan Nagar, Durg, District - Durg, Chhattisgarh for the offence under Section 376, 384, 506, 411/34 of the IPC and Section 6 of Protection of Children from Sexual Offences Act.

3. It is submitted by learned counsel for the applicant in CRR No.683 of 2020, that the applicant is a child in conflict with law who has been falsely implicated in this case. According to the FIR lodged the date of incident is mentioned as 25-08-2019, whereas, the FIR has been lodged after passing of about one year on the basis of a complaint filed by the mother of the prosecutrix on 07-08-2020. The only allegation against this applicant is to this extent that he had taken photograph of the sexual act in which co-accused was engaged with the prosecutrix. The social status report was not altogether against the applicant even then the same was not appreciated by the Juvenile Justice Board and the appellate Court and thus they have passed erroneous orders of rejection against this applicant. Hence, it is prayed that this revision petition be allowed and the relief be granted to this applicant.

4. Learned counsel for applicant in MCRC No.7367 of 2020 submits that this applicant has been falsely implicated. It is a clear case of delayed FIR which has been lodged after one year from date of the incident. It is a case of single incident of rape. The allegations regarding photographs which were taken at the time of incident and were used for extortion of the prosecutrix, were not found in the possession of this applicant in the investigation done by the police. There are statement of witnesses that the prosecutrix was extorted to deliver jewellerys of her mother. The complainant filed an application praying for Supurdnama of the seized jewellerys, but her application was rejected which is a circumstance in favour of this applicant. Therefore, on these grounds this

applicant be granted bail.

5. Learned counsel for the State/non-applicant opposes the petitions and submits that the statement of the prosecutrix under Section 164 of the Cr.P.C. is very categorical and full of allegations against the child in conflict with law (applicant in CRR No.683 of 2020) and also applicant Akash Goswami (applicant in MCRC No.7367 of 2020) regarding commission of offences. This statement by itself gives reasonable explanation of the delay that has occurred in lodging of the FIR. Hence, looking to gravity of the offences committed by both these applicants, they are not entitled for grant of bail.

6. Learned counsel appearing for the complainant adopts the argument advanced by the State counsel and submits that both the applicants are not entitled for grant of bail.

7. Heard learned counsel for the parties and perused the case diary.

8. The case against the applicants is this, that on 25-08-2019, the child in conflict with law (applicant in CRC No.683 of 2020) called the minor prosecutrix on phone asking her to collect notice given by the school. When the prosecutrix arrived on the spot she saw the child in conflict with law (applicant in CRC No.683 of 2020) and applicant Akash Goswami (applicant in MCRC No.7367 of 2020) waiting for her on a bike. The child in conflict with law (applicant in CRR No.683 of 2020) then caught hold of her hand and by beating her tied her hands and feet. The prosecutrix was taken to a house under construction which was a lonely place. It is alleged that applicant Akash Goswami totally disrobed the minor prosecutrix and then forcefully raped her after gagging her mouth with a handkerchief. It is alleged that the child in conflict with law (applicant in CRC No.683 of 2020) was present there who took photographs of the act and then he also threatened that if the prosecutrix disclosed about the incident to anybody, she will be done to death and her photographs will be made viral. After few days when the prosecutrix went to the

school it was the child in conflict with law (applicant in CRC No.683 of 2020) who asked her to deliver him jewellery of her mother by threatening that he will make her photographs viral. The prosecutrix complied with his demand, but this demand of extortion was made by him again and again, until the missing of jewellery of mother of the prosecutrix were discovered. After this discovery, when mother of the prosecutrix enquired from her the prosecutrix disclosed about the incident of rape and other incidents. Subsequent to that, the FIR has been lodged.

9. Considered on the submissions and facts of the case. It appears that delay in lodging the FIR has been explained, which shall be further subject to examination by the trial Court. It is a case of commission of multiple offences in a planned manner. Therefore, I am of this view that grant of bail to the child in conflict with law (applicant in CRC No.683 of 2020) would certainly defeat the ends of justice and as regards applicant Akash Goswami (applicant in MCRC No.7367 of 2020), he is not found entitled for grant of bail. Hence, CRR No.683 of 2020 and MCRC No.7367 of 2020 both are dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge