

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRMP No. 2318 of 2018**

State of Chhattisgarh, Through: Police Station- Sirgitti, District- Bilaspur (C.G.)

**---- Petitioner**

**Versus**

Balram Sahu, S/o Shri Gokul Prasad Sahu, Aged About 18 Years, R/o New Loko Colony, Quarter No. 723/1, Police Station- Sirgitti, District- Bilaspur (C.G.)

**---- Respondent**

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For State/ Petitioner : Mr. Dinesh Tiwari, Dy. Govt. Adv.

For Respondent : None.  
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**Hon'ble Shri Justice Ram Prasanna Sharma**

**Order On Board**

**06/02/2020**

1. Heard on I.A. No. 01/2019, application for condonation of delay in filing the petition.
2. For the reasons mentioned in the application and as per the law laid down by Hon'ble the Apex Court in the matter of **State of Haryana Vs. Chandra Mani & others** reported in **(1996) 3 SCC 132**, the delay of 147 days in filing the petition is condoned.
3. Also heard on application for grant of leave to appeal filed under Section 378 (3) of the Code of Criminal Procedure, 1973.
4. This petition is preferred against judgment dated 15.02.2018 passed by Special Judge under Protection of Children from Sexual Offences Act, 2012 (for short "the Act, 2012"), Bilaspur (C.G.) in Special Criminal Case No. 312/2016, wherein the

said court acquitted the respondent for charge under Sections 354 & 354D of IPC, 1860 & Section 8 of the Act, 2012.

5. First question for consideration before this Court is whether the prosecutrix was minor on the date of incident i.e. on 09.04.2016. Niramala Ramteke (PW-2) who is mother of the prosecutrix did not depose date of birth of the prosecutrix. Father of the prosecutrix is not examined because he is not surviving. In absence of clear statement by the parents, the date of birth of the prosecutrix is not established by oral evidence. One birth certificate Article-A was produced before the trial court, but the fact remains that there is no evidence on record as to who gave information to registration authority regarding date of birth of the prosecutrix, therefore, the document itself is not sufficient to establish date of birth of the prosecutrix. It is not proved that the prosecutrix was below 18 years of age.
6. Second question for consideration before this Court is whether the respondent has committed any criminal act against the prosecutrix. The prosecutrix (PW-1) deposed (Para 4) that she was having love affair with the respondent and he used to come at her home. She further deposed that the respondent had maintained good relation with her brother and mother. She further deposed that she was willing to marry with the respondent.
7. Taking into consideration entire evidence of the prosecutrix, it is clear that the respondent was having love affair with the

prosecutrix, therefore, any advancement by the respondent cannot be termed as criminal force. When both have developed affair, meeting with the prosecutrix cannot be termed as stalking as defined under Section 354D of IPC, 1860. There is nothing that any interaction is done despite clear indication of disinterest by the prosecutrix, therefore, charge under Section 354 & 354D of IPC, 1860 is not established. Again, when the prosecutrix is not proved to be child, Section 8 of the Act, 2012 has no application.

8. The trial court elaborately discussed the entire evidence and recorded finding of acquittal. After reassessing the entire evidence, this Court has no reason to interfere with the said order. It is not a case where respondent should be called for hearing again for full consideration of this petition. Accordingly, application for grant of leave to appeal is rejected.
9. Consequently, the petition stands dismissed at motion stage itself.

**Sd/-**  
**(Ram Prasanna Sharma)**  
Judge