

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 8043 of 2019**

Parmeshwar Chandravanshi, son of Lilhar Chandravanshi, aged about 20 years, R/o Village Aalikhuta, Police Station Tumdibod, District Rajnandgaon (CG).

---- Applicant**Versus**

State of Chhattisgarh, through Station House Officer, Police Station Balod, District Balod (CG).

---- Non-applicant

For Applicant	: Mr. Shikhar Sharma, Advocate
For Non-applicant	: Mr. Ravi Maheshwari, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****09.01.2020**

1. Informant Radha Bai Thakur was not present yesterday and she is also not present today, though notice has been served upon her.
2. This is second bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court.
3. Perused the case diary provided by the counsel for the State in connection with Crime No.70/2019 registered at Police Station Balod, District Balod for the offence punishable under Sections 363, 366, 376 of Indian Penal Code and Sections 4, 5(L) and 6 of POCSO Act.
4. The first bail application of the applicant was rejected on merits by this Court vide order dated 13.05.2019 passed in M.Cr.C. No.2801/2019.
5. Case of the prosecution, in brief, is that on the date of incident the prosecutrix was below 16 years of age. She is a resident of village Matiya. There was love affair between her and the applicant. On 09.02.2019, the applicant took her to Hyderabad. He committed sexual intercourse with her on the pretext of marriage.
6. Counsel for the applicant submitted that the date of birth of prosecutrix is 21.11.2002 thus at the time of incident she was more than

16 years of age. He drew my attention on para Nos.13, 14 & 15 of the true copy of statement of prosecutrix (P.W.1), which is a part of bail application. He further submitted that in these circumstances, the applicant may be released on bail.

7. On the other hand, counsel for the State opposed the bail application. However, he submitted that no criminal antecedent has been reported against the applicant as per police case diary.

8. As per enclosed photo copy of progress report, the date of birth of prosecutrix is 21.11.2003. Prosecutrix (P.W.-1) had stated in para No.1 during the examination in chief that her date of birth is 21.11.2002.

9. This is well settled legal principle that while dealing with the bail application, this Court can neither scrutinize the evidence nor appreciate the same. It is only the trial Court, who can do so.

10. This is also well settled legal principle that while dealing with the bail application, the Court cannot touch the merit and demerit of the case.

11. Prosecutrix (P.W.-1) had stated against the applicant in para No.1 during examination in chief.

12. Prima facie at this stage it cannot be said that at the time of alleged incident the prosecutrix was more than 16 years of age.

13. Looking to above mentioned facts and circumstances of the case, this Court finds that it is not a fit case where the applicant be released on bail in the second round of litigation. Consequently, the second bail application is rejected.

14. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)
JUDGE