

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 8237 of 2019**

Bhakoli Ram @ Suraj S/o Shri Gangaram Satnami Aged About 35 Years R/o Village Koskatti, Ps Takhatpur, District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through- S.H.O. Jarhagaon, District Mungeli, Chhattisgarh., District : Mungeli, Chhattisgarh

---- Respondent

For the Applicant	:	Shri Dharendra Pandey, Advocate
For the State	:	Shri Ravi Maheshwari, P.L.
For the Informant/objector	:	Shri S.S. Paikra, Advocate

Hon'ble Shri Justice Sharad Kumar Gupta

Order On Board**03/02/2020**

1. This is the second bail application under Section 439 of the CrPC. Earlier his first bail application was rejected by this Court vide order dated 18/06/2019 passed in MCRC No. 2906/2019 considering *prima facie* case against him.
2. Perused the case diary provided by the counsel for the State in connection with the Crime No.14/2019 registered at Police Station Jarhagaon, District Mungeli (C.G.) for the offence punishable under Sections 363, 366, 376 (2)(N) of IPC & 4,6,5 of POCSO Act.
3. Case of the prosecution, in brief is that on 16/01/2019 prosecutrix was below 16 years of age. She is resident of village Daukapa. There was love affair between her and applicant. On 16/01/2019 they eloped. Applicant committed repeatedly sexual intercourse with her. They lived like husband and wife.
4. Counsel for the applicant submitted that prosecution failed to prove that at the time of alleged incident prosecutrix was below 16 years of age. She was a consenting party. He drew my attention on para No. 8 and 11 of certified copy of statement of PW-1 prosecutrix, para No. 4 of certified copy of statement of PW-2 Preeti, para No. 6 of certified copy of statement of PW-3 Holiram who is father of the prosecutrix.

5. On the other hand, counsel for the State opposes the bail application. He further submits that no criminal antecedents has been reported against the applicant in the police case diary.
6. This is well settled legal position that while dealing the bail application Court neither can scrutinize the evidence nor appreciate the evidence. It is the trial Court who can do so at the time of disposal of the case. Moreover PW-1 prosecutrix had stated in para No. 1 in examination-in-chief her date of birth is 2003.
7. This is also well settled legal position that while dealing the bail application Court neither can touch merits and demerits of the case.
8. Looking to the above mentioned facts and circumstances of the case *prima facie* it cannot be said that at the time of alleged incident prosecutrix was more than 16 years of age.
9. Looking to the above mentioned facts and circumstances of the case, looking to this fact that *prima facie* at the time of alleged incident prosecutrix was below 16 years of age, looking to seriousness of the offence, impact of granting bail to accused on society, this Court finds that this is not a fit case where applicant may release on bail in second round of litigation. Consequently, second bail application of the applicant is rejected.

Sd/-

(Sharad Kumar Gupta)
Judge