

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 367 of 2021**

Pankaj Dewangan S/o Rajkumar Dewangan, Aged About 28 Years R/o Village Medha, Ward No. 15, Bazar Chowk, Dongargarh, District Rajnandgaon, Chhattisgarh.

---- Applicant**Versus**

State of Chhattisgarh Through - Station House Officer, Police of Police Station Dongargarh, District Rajnandgaon, Chhattisgarh.

---- Non-applicant

 For Applicant : Shri Hemant Kumar Agrawal, Advocate
 For Non-applicant/State : Shri Roshan Dubey, Panel Lawyer
 Prosecutrix is present through virtual mode along with her mother Geeta Sahu and Shri Anup Verma, Legal Aid Counsel.

(Proceedings through Video Conferencing)**Hon'ble Shri Justice Parth Prateem Sahu****Order on Board****23.07.2021**

1. This is first application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to applicant, who is in custody since 09.11.2020 in connection with Crime No.507 of 2020 registered at Police Station Dongargarh, District Dongargarh (C.G.) for commission of the offence punishable under Sections 363, 366, 376 of Indian Penal Code and Sections 4, 6 of Protection of Children from Sexual Offences Act.
2. Case of the prosecution is that, on 07.11.2020, at about 11.30 P.M., present applicant came near to her house in night, after giving call to the prosecutrix, he called her and thereafter, took her on his motorcycle to under construction house, where upon deceiving her of marriage, committed sexual intercourse with her. When maternal grandmother of prosecutrix woke up in night and found prosecutrix not sleeping along with her, she intimated this

fact to her husband Jhumuk Lal (maternal grandfather of prosecutrix), thereafter, they went to search. The prosecutrix was found near Krishna Temple and upon asking, she intimated the incident to her maternal grandparents. The incident was reported to concerned police station, based upon which, instant crime was registered against the present applicant.

3. Shri Hemant Kumar Agrawal, learned counsel for the applicant submits that complainant was a consenting party, she herself came out of her house and accompanied the present applicant. He further pointed out that mark-sheet collected by prosecution during the course of investigation showing date of birth as 10.11.2003 is not of the prosecutrix as father of child named therein has been shown as Punesh Kumar, whereas in other documents of charge-sheet like MLC report and statement recorded under Section 161 of Cr.P.C. name of the father has been shown as Jhumuk Lal Sahu. It is contended that as there is no proof of age of the prosecutrix to be below 18 years of age on the date of incident, hence, applicant may be enlarged on bail.
4. On the other hand, Shri Roshan Dubey, learned Panel Lawyer representing the State while opposing the submissions made by learned counsel for the applicant submits that there is specific allegation levelled against the present applicant that by deceiving her of marriage, applicant has committed sexual intercourse with the prosecutrix. He further submits that in the First Information Report, it is clearly mentioned that prosecutrix is residing along with her maternal grantparents. The First Information Report was

lodged by maternal grandfather, by name, Jhumuk Lal Sahu, hence, from the contents of First Information Report, it is clear that Jhumuk Lal is not father of prosecutrix, but he is maternal grandfather. The mark-sheet collected by the prosecution during the course of investigation is of Government Primary School, Murmuda where prosecutrix has initially taken her education wherein father's name has been mentioned as Punesh Kumar. It is contended that in view of contents of First Information Report and details mentioned in the mark-sheet of prosecutrix, it cannot be said that mark-sheet collected by prosecution is of some other girl.

5. Upon putting specific query from the mother of girl present through virtual mode, she stated that name of father of the prosecutrix is Punesh Kumar.
6. I have heard learned counsel for the parties.
7. Taking into consideration the facts and circumstances of the case, nature of allegations and age of prosecutrix on the date of incident to be below 18 years age and further considering the fact that First Information Report was lodged by maternal grandfather of prosecutrix wherein his name has been shown as Jhumuk Lal and statement made by mother of prosecutrix that name of the father of prosecutrix is Punesh Kumar, I do not find it to be a fit case to enlarge the applicant on bail. Accordingly, bail application is dismissed.

Sd/-
(Parth Prateem Sahu)
Judge