

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 774 of 2021****Reserved on 9-8-2021****Pronounced on 25-8-2021**

- Shivam Kumar Patel, s/o. Ravishankar Patel, aged about 25 years, r/o. Village Madhupuri, Police Station Maharajpur, District Mandala (MP). --Applicant

Vs.

- State of Chhattisgarh through Station House Officer, Police of Police Station Jamul, District Durg (CG). --Respondent

For Applicant	:	Mr. Jitendra Gupta, Advocate.
For State	:	Mr. Gurudev I Sharan, Govt. Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas**CAV Order**

1. The applicant has preferred the first bail application under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail as he is in jail since 19-6-2020 in connection with Crime No. 41 of 2018 registered at Police Station Jamul, District Durg (CG) for the offence punishable under Sections 363, 366, 376 of IPC and Sections 4 & 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, "the Act, 2012").
2. The case of the prosecution, in brief, is that 17-1-2018 at about 3.30 pm when the mother of the prosecutrix came to her house from the market, she did not find her daughter in the house. After searching her daughter in the house of relatives and

neighbours, she did not find her daughter anywhere, therefore, mother of the victim/prosecutrix lodged the missing report in Police Station Jamul on the basis of which investigation was conducted and during the course of investigation, the Police has recovered the prosecutrix from the possession of the applicant, thereafter the the Police has registered the crime for the offence punishable under Sections 363, 366 and 376 of IPC and Sections 4 & 6 of the Act, 2012 and thereby the aforesaid offence has been committed by him.

3. Learned counsel for the applicant would submit that the applicant has been falsely implicated in this case, prosecutrix was major on the date of incident and she herself left her house and called the applicant with her and there is no any alarm raised by the prosecutrix. He would further submit that the prosecutrix is a consenting party, neither the applicant has committed any offence nor participated in any such act which may amount to any of the offences mentioned above. He would further submit that the charge sheet has been filed in this case, the applicant is in jail sine 24-7-2020 and trial will take for some time to conclude, therefore, he may be enlarged on bail.
4. On the other hand, learned counsel for the State opposing the bail application would submit that at the time of incident, the prosecutrix/victim was below 18 years of age on the date of incident, therefore, she was a child within the meaning of Section

2 (d) of the POSCO Act, 2012 and, therefore, the question of consent does not arise. Hence, the applicant is not entitled to be released on bail.

5. This court issued notice to prosecutrix for her appearance before this court on 28-7-2021. Though notice has already been served on prosecutrix, but she did not appear before this court to raise her objection.
6. I have heard learned counsel for the parties and perused the case diary.
7. Perusal of the case diary reveals that the prosecutrix in her statement recorded under Section 161 of C.P.C., has clearly stated that her date of birth is 18-4-2001 and the incident took place on 17-1-2018, thereby the age of the prosecutrix on the date of incident is 16 years and eight months. It further reveals that the applicant abducted her and took her to Mumbai on the pretext of marriage and there he kept her and committed rape on her.
8. Considering the facts and circumstances of the case, the manner in which the applicant kidnapped the prosecutrix and committed rape on her on the pretext of marriage and further considering the statement and age of the prosecutrix who was below 18 years of age on the date of incident, I am of the considered opinion that it is not a fit case to grant bail to the applicant.

9. Accordingly, the instant bail petition is liable to be and is hereby rejected.

Sd/-

(Narendra Kumar Vyas)
Judge

Raju