

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Proceedings through Video Conferencing

MCRC No. 857 of 2021

- Keshav Kumar Tamo @ Chhotu S/o Rajkumar Tamo Aged About 25 Years R/o Kumharras Hall, Near State Bank Chowk, Ward No.- 01, Dantewada, Police Station- Dantewada, District Dantewada,CG ...**Applicant**

Versus

- State of Chhattisgarh through, Station House Officer, Police Station- Dantewada, District Dantewada, CG ...**Non-applicant**

 For Applicant : Mr. Somitra Kesharwani, Adv.
 For respondent/State : Mr. Dinesh Tiwari, Dy. Govt. Adv.

Hon'ble Shri Justice N.K. Chandravanshi

Order on Board

28-7-2021

1. This is first bail application filed under Section 439 of the Criminal Procedure Code, 1973 for grant of regular bail to the applicant, who has been arrested on 2-11-2020 in connection with Crime No. 67/2020 registered at Police Station Dantewada, Distt. Dantewada (C.G.), for the offence punishable under Sections 363, 376, 376(2)(n) of the Indian Penal Code and Section 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.

2. In compliance of the notice issued by this Court, the prosecutrix along with her father appeared before this Court through video conferencing on 27-7-2021 and submitted that bail should not be granted to the applicant.

3. Case of the prosecution, in brief, is that in the evening of 25-10-2020, the applicant abducted minor victim/prosecutrix, took her to Nijamabad (Telangana), kept her till 1-11-2020 in a lodge and committed rape with her. The prosecutrix was recovered from possession of the applicant on 1-11-2020. On the report being lodged and after due investigation, charge sheet has been filed against the applicant for the offences as mentioned in para 1 above.

4. Learned counsel for the applicant submits that the applicant has been falsely implicated in this case. He is innocent. The prosecutrix and the applicant were in love with each other. On the

date of incident, the prosecutrix was not minor because as per ossification test report, her age has been opined as 15 to 16 years and there is margin of 3 years. The school record seized by the police is not reliable. He further submits that the applicant is ready to abide all the terms and conditions imposed by the Court while granting bail to him. He prays that bail may be granted to the applicant.

5. On the contrary, learned State counsel opposes the application for grant of bail. He submits that at the time of incident, age of the prosecutrix was below 15 years which is supported by her school record and ossification rest report also. He further submits that looking to the nature and gravity of the offence, the applicant is not entitled for grant of bail.

6. Heard learned counsel for the parties and perused the case diary and the material available with the bail petition.

7. The statement recorded under Section 161 of the Cr.P.C. and also the Court statement of the prosecutrix show that she was having affair with the applicant and she herself went along with the applicant, but since she was minor at the time of incident, therefore, her consent has no value in the eye of law. As per date of birth stated by the applicant and her school record and also as opined by the doctor on the basis of the ossification test, she was minor at the time of incident. The argument advanced by learned counsel for the applicant that at the time of incident, the prosecutrix was not minor does not appear to be true.

8. Looking to the facts and circumstances of the case, nature and gravity of offence, I am not inclined to release the applicant on bail.

9. Consequently, the instant bail application is rejected.

Sd/-
(NK Chandravanshi)
JUDGE