

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No.1131 of 2021**

- Rohit Nagarchi S/o Sanat Kumar Nagarchi Aged About 23 Years R/o Village Kurra, Police Station Govra Navapara, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Petitioner**Versus**

- State Of Chhattisgarh Through Police Station Govra, Navapara District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondent**Present:-**

Shri Akhilesh Kumar, counsel for the applicant.
Shri Lalit Jangde, Dy.GA for State.

Single Bench: Hon'ble Shri Justice Manindra Mohan Shrivastava
Order On Board

16/07/2021

Heard.

1. This is repeat bail application. Earlier bail application was dismissed as withdrawn.
2. The applicant has moved this application under Section 439 of the Cr.P.C. for grant of regular bail in connection with Crime No.170/2020 registered at Police Station Govra-Navapara, District Raipur for the offence punishable under Section 366, 376 of the IPC and Section 4 & 6 of POCSO Act. The applicant was arrested on 02-05-2020.
3. Prosecution case is that the applicant abducted and thereafter committed rape on the prosecutrix.
4. Learned counsel for the applicant would submit that no case for commission of offence of rape or offence under the POCSO Act is made out against the applicant, because, the statement of the prosecutrix shows that the applicant and the prosecutrix were in affair and thereafter, the prosecutrix came to the house of the applicant and they also got married and sexual intercourse was committed in the capacity of husband and wife. He would next submit that there was a dispute with regard to domestic violence and then, in order to

falsely implicate the applicant, allegation of rape is now being levelled. It is further submitted that present is not the case that the applicant has committed the act of sexual intercourse only to satisfy the sexual desire, but as husband of the prosecutrix. He also submitted that though, the prosecutrix left her house and resided with her husband since June 2019, but the report was lodged only on 02-05-2020.

4. On the other hand, learned State counsel opposes the bail application by submitting that the alleged ground of consent raised by the applicant is of no consequence, because according to birth certificate of the prosecutrix, she was born on 27-02-2004 and on the date of alleged commission of offence, her age was less than 16 years.

5. Taking into consideration the submission made by learned counsel for the parties, particularly taking into consideration that though it is said to be a case of consent between the applicant and the prosecutrix, age of the prosecutrix, according to the charge sheet, is less than 16 years as also in view of the authoritative pronouncement of the Supreme Court in the case of ***Independent Thought versus Union of India and Another, (2017) 10 SCC 800***, the present is not a fit case for grant of bail.

6. Accordingly, the bail application(M.Cr.C.No.1131/2021) is rejected.

Certified copy as per rules.

SD/-
(Manindra Mohan Shrivastava)
Judge