

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 1982 of 2021**

- Utsav Malviya, S/o Radheshyam Malviya, Aged About 20 Years, Caste Malviya, R/o Village Gandavada, Tahsil Babai, District-Hosangabad (M.P.)

---- Applicant**Versus**

- State of Chhattisgarh Through Police of Police Station Baradwar, District- Janjgir- Champa (Chhattisgarh)

---- Respondent

For Applicant : Mr. Sanjeev Verma, Advocate.

For State/respondent : Mr. Samir Uraon, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order On Board****30/07/2021**

Heard.

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure, 1973 on behalf of the applicant for grant of regular bail to him as he is in custody in connection with Crime No.86/2020 registered at Police-Station-Baradwar, District-Janjgir-Champa(C.G.) for the offence punishable under Sections 363, 366, 376 of IPC and Section 4 & 6 of POCSO Act, 2012 and Section 3(2)(5) of SC/ST Act.
2. It is submitted by the learned counsel for the applicant, that the applicant has been falsely implicated in this case. He is in jail since 03.07.2020. The statements of prosecutrix under Section 161 & 164 CrPC show, that the prosecutrix herself after developing friendship on telephone decided to leave her parental house and she herself

traveled on train to meet the applicant. Subsequent to which, she willingly and consensually resided and cohabited with the applicant for some time, therefore, there is no case present against this applicant, hence, it is prayed that this applicant may be enlarged on regular bail.

3. On the other hand, learned counsel for the State opposes the bail application and the submission made in this respect. It is submitted that the prosecutrix was of age only 15 years and 10 months at the time of incident, therefore, her consent and willingness is immaterial. The prosecutrix was also harassed and beaten by the applicant while she was resided with him, hence, the application be rejected.
4. Notice was issued to the complainant/prosecutrix which has been returned served, but there is no appearance and no representation.
5. I have heard the learned counsel for both the parties and perused the case diary.
6. As per prosecution case, it is alleged that the applicant and the prosecutrix developed friendship and love on mobile phone. Subsequent to which, on the proposal given by applicant, the prosecutrix left her parental house, traveled by train and met the applicant. The applicant then took her to places and kept her in his custody. He performed a marriage and then also had physical relation with her on number of occasions, knowing well that she was not capable to give consent for such relation being minor.
7. Considered on the submissions. Taking into consideration the statement of the prosecutrix under Section 161 & 164 CrPC and other circumstances present, I feel inclined to allow the application of this applicant.

8. Accordingly, the bail application filed under Section 439 of Cr.P.C. is allowed. It is directed that the applicant shall be released on bail on his furnishing a personal bond for a sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned trial Court, for his appearance as and when directed.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Nisha