

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.CR.C. No. 4653 of 2020**

Mohd. Rahman Taj, S/o. Samsuddin, aged about 27 years, R/o. Village-Devnagar, Tehsil- Ramanujnagar, P.S. and District- Surajpur, Chhattisgarh.

---- Applicant**Versus**

State of Chhattisgarh, Through - Station House Officer, Surajpur, District-Surajpur, Chhattisgarh.

---- Respondent

For Applicant	: Mr. Surfaraj Khan, Advocate
For Respondent/State	: Mr. Adil Minhaj, G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order On Board****27/01/2021**

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicant, who has been arrested in connection with Crime No.363/2019, registered at Police Station –Surajpur, District – Surajpur (C.G.) for the offence punishable under Section 498-A/34, 376 (2) (n), 376 (2) (i), 465, 468 of the Indian Penal Code and Sections 9 & 11 of the Child Marriage Restraint Act and Section 6 of the Protection of Children from Sexual Offences Act, 2012.
2. It is submitted by the learned counsel for the applicant that the applicant has been falsely implicated in this case. The allegation of offence under Section 498-A of I.P.C. is misconceived. As regards the other allegation about performing marriage with a minor girl of age 13 years, the same is permitted under Shariat law. The applicant and the prosecutrix both are Mohammadan by religion and according to the

Shariat law a girl, who attains puberty can be married. The marriage of the applicant with the prosecutrix had been an arranged marriage with consent of the parents of the prosecutrix. Subsequently, the prosecutrix has re-married and is now residing with present husband. It is submitted that same question has been dealt with in case of ***Mohd. Samim Vs. State of Haryana & Ors.***, in ***Criminal Writ Petition No.532 of 2018 on 26 September, 2018***, before the Court of Punjab & Haryana, in which marriage of the minor girl with the petitioner under Muslim law was held to be lawful. The applicant is in jail since 08.11.2019. Hence, it is prayed that the applicant may be enlarged on bail.

3. On the other hand, learned counsel for the State opposes the bail application and the submissions made in this respect. It is submitted that the age of the prosecutrix was only about 13 years at the time, when her marriage was performed with the applicant. The mother of the prosecutrix has also been made an accused in this case. It is submitted that provisions of Penal Code and the POCSO Act do not give any relief in this kind of marriage on the ground of Shariat law, as these enactments do not speak of any exception. There is clear statement of the prosecutrix under Section 164 of Cr.P.C. and the diary statement of the other witnesses, therefore, no case is made out for grant of bail to the applicant.
4. Complainant – Manoj Jaiswal, District Child Protection Officer, Surajpur is present in person before this Court on notice. He has stated that he has strong objection in grant of bail to the applicant.
5. I have heard the learned counsel for both the parties and perused the case diary.

6. Case of the prosecution is this that the minor prosecutrix of age 13 years was married by her mother to this applicant according to Muslim customs. The applicant was already married, his previous wife and the applicant both harassed and tortured the minor prosecutrix and she was driven out of her matrimonial home by the applicant after uttering the word Talak. The prosecutrix was then admitted in Children Home, Ambikapur. The District Children Protection Officer then made a complaint to the police on the basis of which, the offences have been registered against this applicant and other accused persons.
7. Considered on the submissions. The ground taken by the applicant regarding application of Shariat law in this particular case will be considered and answered in the trial. Considering the other fact that it was the mother of the prosecutrix herself, who had arranged this marriage of the prosecutrix with this applicant and that the applicant is in jail since 08.11.2019 and also that charge-sheet in this case has been filed, this Court is of the opinion that present is a fit case, in which, the applicant should be enlarged on regular bail.
8. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed.
9. It is directed that applicant shall be released on bail on his furnishing a personal bond in the 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.

Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge