

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.CR.C. No. 5110 of 2021**

Badal Chandrakar, S/o. Radheshyam Chandrakar, aged about 28 years, R/o. Near Old Market, Kurud, P.S. and Tehsil- Kurud, District- Dhamtari, Chhattisgarh.

---- Applicant**Versus**

State of Chhattisgarh, Through - Station House Officer, Police Station- Kurud, District- Dhamtari, Chhattisgarh.

---- Respondent

For Applicant	: Mr. Prafull N. Bharat, Sr. Advocate with Mr. Mayank Chandrakar, Advocate
For Respondent/State	: Mr. Alok Nigam, G.A.
For Objector	: Mr. Shivendu Pandya, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order On Board****16/08/2021**

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.132/2021, registered at Police Station – Kurud, District – Dhamtari (C.G.) for the offence punishable under Section 294, 506, 376 & 377 of the Indian Penal Code and Section 6 of Protection of Children from Sexual Offences Act, 2012.
2. Learned Senior Counsel appearing on behalf of applicant submits that the applicant has been falsely implicated in this case. The FIR lodged

is totally false. It is mentioned in the written complaint given by the prosecutrix that the incident started from 30.03.2009 and continued till 16.10.2020, which show a long affair of 12 years. The allegation regarding physical exploitation of the prosecutrix and regarding subjecting her to unnatural intercourse is totally false. The FIR against the applicant is hopelessly delayed by number of years, which was lodged on the basis of the written complaint dated 30.03.2021. It is submitted that prior to lodging of FIR, the prosecutrix had filed a complaint in the police station – Kurud that she and the applicant both have married in a temple and regarding her intention to live as wife of the applicant on which notice under Section 155 of Cr.P.C. was issued. Copy of the same has been filed along with the application as Annexure A-2. On the same date, the applicant filed a complaint in the office of the Superintendent of Police, Dhamtari that he has no relation with the prosecutrix and she is pressurizing and forcing him to marry her by putting him under threat that she will involve him in a false case. Copy of the complaint has also been filed as Annexure A-3. It is also submitted that the applicant has also filed an application under Section 156 (3) of Cr.P.C. praying for registration of FIR against the prosecutrix, which is pending. It is further submitted that if the relationship of the applicant with the prosecutrix are to be considered as alleged, then the that relationship should be regarded as consensual as the age of the prosecutrix is at present about 26 years. Hence, there is no case against this applicant. Hence, it is prayed that the applicant may be released 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 in the year 2009, the prosecutrix had been minor when her

relationship with the applicant was established, therefore, on that duration of time, her physical relation with the applicant was certainly an offence, as the prosecutrix was incapacitated for giving any consent for such relationship being a minor. Therefore, the applicant is not entitled for grant of bail.

4. Counsel for the objector submits that on the date of incident, in the year 2009, the age of the prosecutrix have been 16 years. During the long relationship, the applicant has continuously threatened the prosecutrix regarding which the prosecutrix has lodged complaint with the police. Because of the threats given by the applicant, the prosecutrix has apprehension that she may be pressurized and influenced to retract from her earlier statement. Therefore, the application be rejected.
5. Prosecutrix is also virtually present through the Help Desk of D.L.S.A., Dhamtari and she has vehemently objected grant of bail to the applicant for the reason that the applicant had been continuously threatening her.
6. In reply, it is submitted by the learned counsel for the applicant that in the year 2009, the Protection of Children from Sexual Offences Act, 2012 had not been enacted, and on the date of enactment in 2012, the prosecutrix was major woman.
7. I have heard the learned counsel for both the parties and perused the case diary.
8. The case of the prosecution is this that in the year 2009, this applicant on the pretext of marrying the prosecutrix, started physically exploiting her and this exploitation has continued for considerable time before the FIR was lodged.

9. Considered on the submissions. As it appears that it is a case of long relationship and most of the time this relationship has continued, the prosecutrix had been major even then she has continued submitting herself to the applicant with the hope that he will marry her. Truth of the allegation regarding her exploitation during her minority is subject to examination in the trial and as regards the threats, if any, given by the applicant, the prosecutrix has option to lodge FIR against the applicant. Considering the facts and circumstances of this case, this Court is of the opinion that present is a fit case, in which, the applicant should be enlarged on regular bail.
10. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed.
11. 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