

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 5254 of 2021

- Shoyab Hussain @ Goldy, S/o Late Zakir Hussain, Aged About 23 Years, R/o Atal Aawas, Ashok Nagar, B-2/08, Thana- Sarkanda, District- Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh, Through: Station House Officer, Police Station- Tarbahar, District- Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh

----Non-applicant

For Applicant – Mr. Saurabh Dangi, Advocate.

For Non-applicant/State – Ms. Smriti Shrivastava, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

23-08-2021

1. Heard on the application filed under Section 439 of the Cr.P.C. This is first bail application before this Court filed by the applicant for grant of regular bail. The applicant has been arrested on 27-05-2021 in connection with Crime No.82/2021 registered at P.S. - Tarbahar, District- Bilaspur, Chhattisgarh for the offence under Section 376, 363, 366 of the IPC and Section 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.

2. It is submitted on behalf of the applicant, that the applicant has been falsely implicated. He is in jail since 27-05-2021. The statement of the prosecutrix under Section 164 of the Cr.P.C. shows that she was a willing and consenting party. Further, she was of age nearly about 18 years. Relying on the judgment of Hon'ble the Supreme Court in the matter of **S. Varadarajan Vs. State of Madras**, AIR 1965 SC 942 it is submitted that the prosecutrix had attained the age of discretion and she was well aware of the consequences when she went in the company of the applicant and stayed with him for a long duration. Therefore, there is no case present against the applicant. Hence, it is prayed that he may be granted bail.

3. Learned counsel for the State/non-applicant opposes the application submitting that the prosecutrix was minor and therefore, her willingness and consent is immaterial. The statement of the prosecutrix under Section 161 of the Cr.P.C. clearly shows that she was sexually exploited by the applicant. Hence, the application may be rejected.
4. Complainant Nafisa Begam is virtually present before this Court through Help Desk of the High Court and she has strong objection in grant of bail to the applicant.
5. Heard learned counsel for the parties and perused the case diary.
6. According to the prosecution case, there is allegation that this applicant abducted the minor prosecutrix, kept her in his custody for some time and continuously established physical relation with her knowing well that she was incapable of giving consent for such relation being a minor.
7. Considered on the submissions. Looking to the admissions in the statement of the prosecutrix under Section 161 of the Cr.P.C. about her love affair with the applicant and other circumstances, I feel inclined to allow this application.
8. Consequently, this application filed by the applicant under Section 439 of the Cr.P.C. for grant of regular bail is hereby allowed. It is directed that the 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 Court, for his appearance as and when directed.
9. Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge