

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MCRC No. 5555 of 2021

Shiva Sahu, S/o Late Khedu Ram Sahu, Aged About 20 Years,
 R/o Mandir Hasoud, Railway Colony, Thana Mandir Hasoud,
 District Raipur, Chhattisgarh.

---- Applicant

Versus

The State of Chhattisgarh Through- Police Station- Mandir
 Hasoud, District- Raipur, Chhattisgarh.

---- Non-applicant

 For Applicant : Shri Parag Kotecha, Advocate
 For Non-applicant/State : Shri Alok Nigam, Govt. Advocate
 Prosecutrix is present in person
 along with her father through virtual
 mode from District Legal Services
 Authority, Raipur.

(Proceedings through Video Conferencing)
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

01.09.2021

1. This is first application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to applicant, who is in custody since 30.05.2021 in connection with Crime No.189 of 2021 registered at Police Station Mandir Hasoud, District Raipur, Chhattisgarh for commission of the offence punishable under Sections 363, 366, 376, 506 of Indian Penal Code and Section 6 of Protection of Children from Sexual Offence Act.
2. Case of the prosecution is that, on 02.02.2021, in the night, at about 10.00 P.M., applicant called the prosecutrix on her roof. When she went on roof, applicant has forcefully put Sindoor on her head and also put Mangalsutra on her neck, which was objected by the prosecutrix, upon which, applicant given threat of

her life and committed forcefully sexual intercourse with her. On the pretext of threat, applicant thereafter made physical relationship with her on number of occasions. The incident was reported by the prosecutrix to her mother, based upon which, report was lodged to the concerned Police Station against the applicant.

3. Shri Parag Kotecha, learned counsel for the applicant would submit that there is delay in lodging the First Information Report. Incident is stated to be of 02.02.2021, but First Information Report was lodged on 29.05.2021. He further submits that as per allegation levelled against the applicant, complainant herself admitted that applicant has performed marriage by putting Sindoor on her head and also Mangalsutra, hence, act of applicant of having making physical relationship will fall into exception provided Section 375 of IPC. Lastly, he submits that MLC report of prosecutrix do not support the case of prosecution; applicant is in jail since 30.05.2021, hence, he may be enlarged on regular bail.
4. Per Contra, Shri Alok Nigam, Govt. Advocate representing the State while opposing the submissions made by learned counsel for the applicant, would submit that prosecutrix has levelled allegation of commission of forceful intercourse by applicant along with her in her statement recorded under Sections 161 and 164 of Cr.P.C. He further submits that on the date of incident, prosecutrix was minor and less than 18 years of age. During the course of investigation, Police has collected the copy of admission register

and school certificate of prosecutrix, i.e. proof of age of prosecutrix.

5. Prosecutrix is present in person along with her father through virtual mode from District Legal Services Authority, Raipur. She submits that applicant should not be enlarged on regular bail.
6. I have heard learned counsel for the parties.
7. Taking into consideration facts and circumstances of the case, nature of allegations levelled against the applicant, statements recorded under Sections 161 and 164 of Cr.P.C. and age of prosecutrix on the date of incident, I do not find it to be a fit case to enlarge the applicant on bail. Accordingly, bail application is dismissed.

Sd/-
(Parth Prateem Sahu)
Judge