

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No.6738 of 2021**

Mansai, S/o Manohar Singh, Aged About 23 Years, Resident of Village Chatniya, Police Station Chando, District Balrampur Ramanujganj Chhattisgarh.

---- Applicant**Versus**

State of Chhattisgarh Through Station House Officer, Police Station Chando, District Balrampur Ramanujganj Chhattisgarh.

---- Non-Applicant**MCRC No. 6759 of 2021**

1. Nirmal Nageshiya, S/o Dharmu Nageshiya, Aged About 22 Years, R/o Village Jariyo, Thana Chando, District- Balrampur Ramanujganj, Chhattisgarh.
2. Premsaay, S/o Sukhdev Nageshiya, Aged About 21 Years, R/o Village Chatniya, Thana Chando, District- Balrampur Ramanujganj, Chhattisgarh.

---- Applicants**Versus**

State of Chhattisgarh Through Police Station- Chando, District- Balrampur Ramanujganj, Chhattisgarh

---- Non-Applicant

For Applicant : Mr. D. Kushwaha, Advocate
(in MCRC No.6738 of 2021)

For Applicants : Mr. Vikas Pandey, Advocate
(in MCRC No.6759 of 2021)

For Non-Applicant/State : Mr. Raghvendra Verma, G.A.

For Complainant : Mr. Pushkar Sinha, Advocate

Prosecutrix is present through virtual mode from District Legal Services Authority, Balrampur.

Hon'ble Shri Justice Parth Prateem Sahu**Order on Board****22.11.2021**

- 1) Mr. Vikas Pandey, learned counsel for the applicant in MCRC No.6759 of 2021, at the outset, seeks permission of this Court for withdrawal of bail application with respect to Nirmal

Nageshiya at this stage with liberty to revive the same at appropriate stage.

- 2) Mr. Verma, learned State counsel submits that he is having no objection on the submission made by learned counsel for the applicant Nirmal Nageshiya.
- 3) In view of above, bail application insofar it relates to Nirmal Nageshiya is dismissed as withdrawn with aforesaid liberty.
- 4) Since both the applications are arising out of same crime number, they are being heard and decided by the common order.
- 5) The applicants have preferred this First Bail Application under Section 439 of Code of Criminal Procedure, 1973 for grant of regular bail to the applicants, who are in custody since 02.06.2021 and 03.06.2021, respectively in connection with Crime No. 27 of 2019, registered at Police Station Chando, District Balrampur Ramanujganj (C.G.) for the offence punishable under Sections 363, 366, 370, 376(2-n), 506 read with 34 of Indian Penal Code and Sections 4, 6, 17 of Protection of Children from Sexual Offences Act, 2012.
- 6) Case of the prosecution is that, applicant Mansai was having relationship with prosecutrix since last four year i.e. since 2017. applicant Mansai took prosecutrix along with him to Jashpur and kept her in a rented accommodation where they stayed till the lock-down commenced. During the lock-down period, prosecutrix returned back to her house and started living with her family. On 27.05.2021, applicant Mansai came to the house of prosecutrix

in the night at about 2.00 AM. He forcefully took her on the motorcycle driven by co-accused Nirmal Nageshiya to Bhatapara. Uncle of prosecutrix came, searching prosecutrix and brought her back. Thereafter, report was lodged to concerned Police Station, based upon which, aforementioned crime is registered against the present applicants.

- 7) Mr. D. Kushwaha, learned counsel for the applicant in MCRC No.6738 of 2021 would submit that applicant Mansai has been falsely implicated in the case and he has not committed any offence as alleged against him. He further submits that even if, allegations levelled by the prosecutrix against applicant Mansai is taken as it is, then also they were having relationship with consent since last four years, hence, it cannot be said that physical relationship made by the applicant is forceful in any manner, therefore, no offence as alleged would be made out against applicant Mansai. He pointed out that when prosecutrix lived in the company of applicant at Jashpur for long period, parents of prosecutrix has not lodged any complaint with Police Station of any nature against the applicant, which itself is sufficient to show that applicant has not committed any offence, but subsequent complaint is lodged only because there was some dispute between prosecutrix and applicant Mansai, hence, he may be enlarged on regular bail.
- 8) Mr. Vikas Pandey, learned counsel for the applicant Premsaay in MCRC No.6759 of 2021 would submit that applicant has not involved in commission of crime in any manner as appearing

from the contents of First Information Report as well as statement of prosecutrix recorded under Section 161 of Cr.P.C. He further submits that as per allegations only motorcycle of applicant Premsaay has been used by other two co-accused persons in commission of alleged offence. Applicant Premsaay was not present on the spot and not participated in any manner, hence, he may be enlarged on regular bail.

- 9) On the other hand, Mr. Raghvendra Verma, Govt. Advocate opposing the submissions made by learned counsel for the applicants would submit that there are specific allegations against applicant Mansai of abducting prosecutrix and keeping her at Jashpur. On the date of first incident as alleged by the prosecutrix i.e. in the year 2017, prosecutrix was only 15 years of age. Even on 27.05.2021, applicant Mansai came to the house of prosecutrix in midnight at about 2.00 AM and forcefully took her to Bhatapara, hence, he is not entitled for benefit under Section 439 of Cr.P.C. at this stage. He further submits that allegation against applicant Premsaay is only that his motorcycle has been used by other two co-accused persons for taking the prosecutrix to Bhatapara on the alleged date of incident i.e. 27.05.2021.
- 10) Mr. Pushkar Sinha, learned counsel for the complainant/prosecutrix opposes the submissions made by learned counsel for the applicant and would submit that applicants are not entitled for grant of bail.
- 11) Prosecutrix is present through virtual mode from District Legal

Services Authority, Balrampur. She submits that she is having objection in grant of bail to the applicants.

- 12) I have heard learned counsel for the parties.
- 13) Taking into consideration entire facts and circumstances of the case, nature of allegations levelled against applicant Mansai, particularly, applicant Mansai came to the house of prosecutrix in the night at about 2.00 AM and forcefully took her to Bhatapara along with other allegations, I do not find it be a fit case to enlarge the applicant Mansai on regular bail at this stage.
Hence, bail application MCRC No.6738 of 2021 filed by applicant Mansai is dismissed.
- 14) The allegation against applicant Premsaay is only that his motorcycle was being used by other Mansai and Nirmal Nageshiya co-accused persons for taking the prosecutrix, there is no participation of applicant Premsaay in commission of alleged crime, hence, I am inclined to release the applicant Premsaay on regular bail.
- 15) Accordingly, bail application (MCRC No.6759 of 2021) insofar it relates to **Premsaay is allowed** and it is directed that applicant Premsaay shall be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with one surety in the like sum to the satisfaction of the trial Court concerned on the conditions that :
 - a) He shall appear before the trial Court concerned regularly on each and every date unless exempted from appearance.

b) He shall not, in any manner, tamper with the prosecution witnesses.

c) If the applicant is found involved in similar offence in future, it will be open for the State to apply for cancellation of bail.

Certified copy as per rules.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh