

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 7805 of 2021**

- Atul Kumar Sande, S/o Shri Amrit Lal Sande Aged About 22 Years R/o Village - Raliya, P.S. Masturi, District - Bilaspur (Chhattisgarh)

---- Applicant (In Jail)**Versus**

- State Of Chhattisgarh Through - Police Station Masturi, District - Bilaspur (Chhattisgarh)

---- Respondent

For Applicant	: Shri Vipin Singh, Advocate
For Respondent/State	: Smt Hamida Siddiqui, Deputy AG

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board**17.11.2021**

1. Applicant has preferred this application under Section 439 CrPC for grant of regular bail as he has been arrested in connection with Crime No.110 of 2020 registered at Police Station Masturi, District – Bilaspur, Chhattisgarh for the offences punishable under Sections 363, 366(A), 376(2)(n) and 376(3) of the IPC and Sections 4, 5(l) and 6 of POCSO (Protection of Children from Sexual Offences) Act, 2012.
2. Case of the prosecution is that on 19.03.2020, father of prosecutrix lodged missing report to concerned Police Station mentioning therein that on 14.03.2020 in the afternoon, his daughter left house and went to some unknown place. Based upon which FIR was registered and during the course of investigation, prosecutrix was recovered from the house of applicant. Prosecutrix was brought to Police Station and her statement was recorded, based upon which, aforementioned crime was registered against the applicant. Applicant was arrested on 25.12.2020.

3. Shri Vipin Singh, learned counsel for the applicant would submit that applicant has not committed any offence as alleged against him. Prosecutrix was examined before trial Court on 25.03.2021, wherein she has not levelled any allegation against him. As per Annexure A2, Birth Certificate issued by Kotwar of village, date of birth of prosecutrix is **31.09.2001**. Hence, even on the date of her absconding, she was more than 18 years of age hence, applicant may be enlarged on regular bail.

4. Ms Hamida Siddiqui, learned counsel for the State opposing the submission made by learned counsel for the applicant submits Police during the course of investigation, seized School Register, wherein date of birth of prosecutrix is shown to be 16.11.2004 ie on the date of incident, she was less than 16 years of age. Prosecutrix was recovered from the possession of applicant. She levelled allegation against applicant of making physical relationship in her statement recorded under Sections 161 and 164 CrPC. Applicant is not entitled for benefit under Section 439 of CrPC.

5. Prosecutrix and her father appeared in person. Both of them stated that they have no objection for granting bail to applicant.

6. I have heard learned counsel for the parties.

7. Taking into consideration nature of allegations levelled against applicant, facts and circumstances of the case, and copy of deposition sheet placed on record as Annexure A3, without commenting anything on merits of the case, I am inclined to enlarge the applicant on bail.

8. Accordingly, bail application is allowed. It is directed that the applicant shall be released on regular bail upon furnishing personal bond in the sum of Rs.25,000/- (Rupees twenty-five thousand) with one local surety in the like sum to the satisfaction of the Court below concerned on the condition that:

- a) Applicant shall appear before the Trial Court regularly on each and every date, unless exempted from appearance.
- b) Applicant 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