

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C. No. 8311 of 2020**

Parmeshwar Chauhan S/o Late Prahlad Chauhan Aged About 23 Years R/o Village Gordha, Police Station Kasdol, District Balodabazar Bhatapara Chhattisgarh.

---- Applicant**Versus**

State Of Chhattisgarh Through Police Station City Kotwali , Balodabazar, District Balodabazar, Bhatapara Chhattisgarh.

---- Respondent

For the Applicant : Shri Shobhit Koshta, Advocate.
For the Respondent/State : Smt. Smita Jha, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****12.01.2021**

Heard.

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.513 of 2020, registered at Police Station – City Kotwali, Baloda Bazar, District Baloda Bazar, Chhattisgarh for the offence punishable under Section 363, 366 and 376 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.

2. Learned counsel for the applicant submits that the applicant is in jail since 22.10.2020 and has been falsely implicated in this case. The prosecutrix was not minor on the date of incident. Further, the statement of the prosecutrix shows that she willingly accompanied the applicant to go to

places and reside with him. She then performed marriage with the applicant and having a child. The sexual relation has taken place after the performance of marriage. According to Section 375(2) of the IPC, sexual relation of a man with his own wife, the wife not being under 15 years of age, is not an offence. Hence, it is prayed that the applicant be enlarged 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 the prosecutrix was clearly a minor of age below 16 years, hence, she was incapable of giving any consent and the offence is clearly made out. Hence, no case is made out for grant of bail to the applicant.

4. Complainant – Ramkumar Dhiwar and the prosecutrix both are present before this Court on notice. They have stated that they have no objection in grant of bail to the applicant.

5. Heard counsel for both the parties and perused the case diary.

6. The prosecution case is that this applicant abducted the minor prosecutrix of age below 16 years and took her to Kanpur where he performed marriage with the prosecutrix and then had physical relation with her which is resulted in pregnancy and birth of one child. Long after the incident, the prosecutrix has been recovered from the custody of this applicant and then she has given a statement regarding her relationship with the applicant.

7. Considered the submissions and the facts of the case. After perusing the statement of the prosecutrix under Section 164 of the Cr.P.C. and also after considering the statement of the prosecutrix and her father/ complainant, I feel inclined to grant regular bail to the applicant.

8. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed.

9. 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. In case any default is committed by the applicant/s in appearing before the concerned trial Court, this order granting bail shall stand cancelled automatically.

Sd/-

(Rajendra Chandra Singh Samant)
Judge