

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MCRC No. 7961 of 2021**

- Kailash Prajapati S/o Ghurfekan Prajapati aged about 42 Years
R/o Sarwamangla Road Fokat Para, Korba, Thana- Tehsil and
District- Korba, Chhattisgarh

-----Applicant**VERSUS**

- State of Chhattisgarh through: Station House Officer, Thana-
Kotwali, Korba, District- Korba, Chhattisgarh.

-----Non-applicant

For Applicant	: Mr. Sanjay Patel, Advocate.
For Non-applicant	: Ms. Hamida Siddiqui, Dy. Adv. Gen.

Hon'ble Shri Parth Prateem Sahu, Judge**ORDER****26/11/2021**

1. Applicant has filed this application under Section 439 of CrPC for grant of regular bail as he has been arrested in connection with Crime No. 508/2021 registered at Police Station Kotwali, District Korba (C.G.) for offence punishable under Section 376(2)(n), 376(f) of IPC and Sections 4 & 6 of POCSO Act.
2. As per case of prosecution, on 07.06.2021, at about 11:30 pm, when prosecutrix was sleeping in a room along with her brother and father (applicant), applicant put finger in her private part and thereafter the report was lodged by her in the night itself to the concerned police station, based upon which, aforementioned crime is registered against applicant.
3. Mr. Sanjay Patel, learned counsel for applicant would submit that prosecutrix initially levelled false allegation against applicant because applicant being her father was forcing her for her marriage, but she wanted to study further. On the date of alleged incident, there was some quarrel between prosecutrix and applicant on the issue of marriage which made prosecutrix to lodge false report. Prosecutrix along with her mother appeared before this Court on 23.11.2021 through virtual mode and stated that they are having no objection in

grant of bail to applicant. The said statement was recorded. Prosecutrix got examined before the trial Court in which she has not supported the case of prosecution (Annexure A-2). He further submits that prosecutrix was examined by the doctor but no corresponding sign over the private part of prosecutrix has been found. Applicant is in jail since 08.06.2021, hence, he may be enlarged on regular bail.

4. Ms. Hamida Siddiqui, learned State counsel, while opposing the submission of learned counsel for the applicant, would submit, that allegations levelled against applicant are heinous. On the date of first incident or the year 2018 prosecutrix was minor, hence, applicant is not entitled for benefit of Section 439 of CrPC.
5. I have heard learned counsel for the respective parties and perused the documents placed on record along with bail application.
6. Taking into consideration, the facts and circumstances of the case, submissions made by prosecutrix and her mother when they appeared before this Court through virtual mode on 23.11.2021, submission of learned counsel for applicant that prosecutrix has not supported the case of prosecution, without commenting anything on merits of the case, I am inclined to allow this bail application.
7. Accordingly, the bail application is allowed. It is directed that the applicant shall be released on regular bail, upon furnishing a bail bond in the sum of Rs.25,000/- with one local surety in the like sum to the satisfaction of the Court on the conditions that-
 - a) Applicant shall appear before the Trial Court regularly on each and every date, unless exempted from appearance.
 - b) The applicant shall not, in any manner, tamper with the prosecution witnesses.
 - c) If the applicant is found involved in similar offence in the future, it will be open for the State to apply for cancellation of Bail.

Certified copy as per rules.

Sd/-
(Parth Prateem Sahu)
 Judge