

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MCRC No. 7897 of 2021**

- Bheem @ Nanu @ T.S. S/o Chhotu Sarthi aged about 24 Years R/o Jamgala, Police Station - Lakhanpur, District - Surguja (Chhattisgarh).

-----Applicant**VERSUS**

- State of Chhattisgarh through: The Station House Officer, Police Station- Lakhanpur, District- Surguja, Chhattisgarh.

-----Non-applicant

For Applicant	: Mr. Jitendra Shrivastava, Advocate.
For Non-applicant	: Mr. Vinod Tekam, Panel Lawyer.

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

1. Prosecutrix who is present along with her father through virtual mode from District Legal Services Authority, Ambikapur submits that they are having no objection in grant of bail to applicant.
2. 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. 82/2021 registered at Police Station Lakhanpur, District Surguja (C.G.) for offence punishable under Section 363, 366, 376, 114, 34 of IPC & Sections 4 and 6 of POCSO Act.
3. As per case of prosecution, prosecutrix eloped along with applicant on 08.05.2021. When prosecutrix did not return back, her father lodged missing report in the police station, based upon which, crime was registered for commission of offence under Section 363 of IPC against unknown person. During the course of investigation, prosecutrix was recovered from village Jamgala from the house of one Sampooran Singh on 13.05.2021. Based on the statement of

prosecutrix recorded under Section 161 of CrPC, aforementioned crime is registered and applicant was arrested.

4. Mr. Jitendra Shrivastava, learned counsel for the applicant submits that applicant has not committed any offence as alleged against him. False and frivolous allegations have been levelled against applicant. Prosecutrix was examined by Child Welfare Committee on 15.05.2021 before the Judicial Magistrate, First Class wherein she has not levelled any allegation against applicant and has stated that on account of frustration she left her house and was sitting at bus stand, from where she was brought back to home by one of the panch of village panchayat. Statement recorded under Section 164 of CrPC before the Judicial Magistrate, First Class, Ambikapur, she has not levelled any allegation that applicant has abducted her or took her for marrying or had made any physical relationship with her. Applicant is in jail since 22.06.2021, hence, he may be enlarged on regular bail.
5. Mr. Vinod Tekam, learned State counsel, while opposing the submission made by learned counsel for the applicant, submits, that prosecutrix on the date of incident was only 13 years and 4 months of age. In the statement recorded under Section 161 of CrPC, prosecutrix has levelled serious allegations against applicant including committing sexual intercourse with her, hence, he is not entitled for benefit of Section 439 CrPC. However, upon putting specific query with regard to statement of prosecutrix under Section 164 CrPC, learned State counsel read-over the statement of prosecutrix recorded under Section 164 of CrPC and submits that in the statement prosecutrix has not stated about commission of sexual intercourse with her but only stated that she left her house along with applicant.

6. I have heard learned counsel for the respective parties.
7. Taking into consideration, submissions made by learned counsel for applicant, submission of father of prosecutrix as well as prosecutrix herself, statement recorded under Section 164 of CrPC and also considering the statement recorded before the Child Welfare Committee, without commenting anything on merits, I am inclined to allow the bail application.
8. 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