

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MCRC No.7974 of 2021

- Sarita Markam, D/o Jailal Markam, aged about 19 years, resident of Village Sargipal, Thana- Vishrampur, Distt. Kondagaon (CG)
---- Applicant (In Jail)

Versus

- The State of Chhattisgarh, through Police Station- Vishrampur, District- Kondagaon (CG).

....Non-applicant

For Applicant	:	Mr. Samir Singh, Advocate.
For Non-applicant	:	Mr. Sanjay Pathak, Panel Lawyer

Hon'ble Mr. Justice Parth Prateem Sahu
Order On Board

23.11.2021

1. This is first application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to applicant, who is in custody since 4.9.2021 in connection with Crime No.78/2021 registered at Police Station Vishrampur, District Kondagaon (CG) for commission of offence punishable under Sections 363, 366 & 376 (2) (n) of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act, 2012.
2. This case was fixed for hearing yesterday i.e. on 22.11.2021. Prosecutrix appeared before this Court through virtual mode from DLSA, Kondagaon and submitted that she has objection in grant of bail to applicant. However, due to paucity of time, this matter could not be decided finally yesterday and passed over for today.
3. Case of the prosecution, in brief, is that on 7.8.2021 co-accused Bhuwan Mandavi forcibly took prosecutrix with him and committed forcible sexual intercourse with her. When prosecutrix did not return home, her father lodged missing report in concerned police station. During the course of investigation, prosecutrix was recovered from village Nagri, District Dhamtari along with co-accused Bhuwan Mandavi.

After recording of statement of prosecutrix, co-accused Bhuwan and present applicant were arrested in connection with commission of crime in question.

4. Mr. Samir Singh, learned counsel for applicant would submit that applicant is not involved in any manner in commission of alleged crime. Prior to date of incident, prosecutrix and co-accused Bhuwan were in talking terms with each other on mobile phone, which subsequently developed into relationship. In the statement recorded under Section 161 CrPC, prosecutrix has not attributed any role to applicant in relation to her first meeting with co-accused Bhuwan. As per allegation, on the first meeting itself co-accused Bhuwan had forcibly established physical relationship with prosecutrix which continued thereafter. It is only in statement recorded under Section 164 CrPC prosecutrix has made allegation that it is present applicant who gave mobile phone number and photographs of prosecutrix to co-accused Bhuwan and also called her to meet him. Applicant is in jail since 4.9.2021, hence, she may be released on regular bail.
5. Per contra, Mr. Sanjay Pathak, learned Panel Lawyer for the State opposes the submissions made by learned counsel for applicant and submits that prosecutrix is less than 16 years of age; in the statement recorded under Section 164 CrPC prosecutrix has levelled allegations against applicant that she was instrumental in fixing meeting of prosecutrix with co-accused Bhuwan. There is further allegation that prosecutrix used to meet co-accused Bhuwan along with present applicant. Hence, applicant is not entitled for grant of regular bail. However, upon putting specific query with regard to statement of prosecutrix recorded under Section 161 CrPC, after going through the same, learned State Counsel does not dispute submission of learned counsel for applicant with regard to statement of prosecutrix under Section 161 of CrPC.
6. I have heard learned counsel for both sides.
7. Taking into consideration nature of allegations levelled against

applicant, statement of prosecutrix recorded under Section 161 CrPC; age of applicant to be 19 years; she is a young girl and in jail since 4.9.2021, without commenting anything on merits of the case, I am inclined to allow this bail application.

8. Accordingly, bail application is allowed and it is directed that applicant shall be released on bail on her furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of trial Court concerned on the conditions that;

- a) she shall appear before the trial Court concerned regularly on each and every date unless exempted from appearance.
- b) she shall not, in any manner, tamper with the prosecution witnesses.
- c) If she 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

roshan/-