

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MCRC No.8289 of 2021

- Mahesh Dhakad, S/o late Shobha Ram Dhakad, aged about 31 years, R/o village Pipronia, P.S. Pahargarh, District Muraina, Madhya Pradesh.

---- Applicant (In Jail)

Versus

- State of Chhattisgarh, through S.H.O, Mohan Nagar, District- Durg (CG).

....Non-applicant

For Applicant	:	Mr. B.P. Singh, Advocate
For Non-applicant	:	Ms. Hamida Siddique, Dy. Advocate General

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

26.11.2021

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 21.7.2021 in connection with Crime No.205/2021 registered at Police Station Mohan Nagar, District Durg (CG) for commission of offence punishable under Sections 363, 366, 376 of the Indian Penal Code and Sections 4 & 6 of the Protection of Children from Sexual Offences Act, 2012.
2. Case of the prosecution, in brief, is that father of prosecutrix lodged missing report on 26.2.2021 based upon which initially offence under Section 363 of IPC was registered against unknown person. During the course of investigation, based on mobile location of prosecutrix, she was recovered from possession of applicant from village Piproniya, District Muraina (MP). After recording of statement of prosecutrix,

crime in question is registered against applicant and he was arrested.

3. Mr. B.P. Singh, learned counsel for applicant would submit that on the date of incident, prosecutrix was a major girl, she on her own will came to Raipur where she joined company of applicant and both went to Muraina (MP). Prosecutrix resided with applicant till her recovery. As per school admission register (Dakhil Kharij Panji) seized by police, date of birth of prosecutrix is '30.1.2004', but school admission register being not admissible piece of evidence, date of birth mentioned therein cannot be considered as full proof of age of prosecutrix. He submits that prosecutrix was examined by Radiologist for determination of her age and as per opinion of Radiologist, age of prosecutrix is in between 18 to 19 years. Therefore, it cannot be said that prosecutrix was minor on the date of accident. Applicant is in jail since 21.7.2021, hence he may be enlarged on regular bail. In support of his contentions, learned counsel places his reliance on decision of Hon'ble Supreme Court in **Sunil vs. State of Haryana** reported in **(2010) 1 SCC 743**.
4. Per contra, Ms. Hamida Siddique, learned Deputy Advocate General for the State opposes the submissions made by learned counsel for applicant and submits that charge sheet under Section 363, 366 & 376 of IPC and Sections 4 & 6 of POCSO Act has already been filed against applicant. During the course of investigation, police seized school admission register, which is a public document maintained in schools run

by government in which particulars of students taking admission in school or leaving school are recorded. According to date of birth of prosecutrix mentioned in school admission register, on the date of incident age of prosecutrix was about 16 years only. The Principal of concerned school also issued certificate regarding handing over and taking back of school admission register by police, which is available in case diary. School admission register, a public document, will be proved in accordance with law during trial, but at this stage, it cannot be disbelieved. Prosecutrix in her statements recorded under Section 161 & 164 of CrPC has made allegations and looking to the fact that prosecutrix is minor and there is material available showing *prima facie* involvement of applicant in commission of crime, he is not entitled for grant of regular bail.

5. Father of prosecutrix is present before this Court through virtual mode from the District Legal Services Authority, Durg. He raises strong objection in grant of bail to applicant.
6. I have heard learned counsel for the parties.
7. During the course of investigation, the police seized school admission register wherein date of birth of prosecutrix is mentioned as '**30.1.2004**'. Incident is of February, 2021. As appearing from school admission register, on the date of incident, prosecutrix was just above 16 years of age. Prosecutrix in her statement stated that she came in contact with applicant through mobile phone; on being called by applicant on mobile, she went to Raipur from where applicant

took her to village Pipronia, District Muraina (MP). There is also allegation that applicant established physical relations with prosecutrix.

8. Case law relied upon by learned counsel for applicant is of no help to applicant being distinguishable on facts. In that case, suspicion has been raised pointing out date of admission, period of admission and that prosecutrix has not attended school. Said judgment was passed by Hon'ble Supreme Court while considering judgment passed by the High Court convicting appellant therein in appeal after evaluating evidence on record. In the case at hand, the trial Court is still to record evidence of witnesses.
9. In view of above, considering age of prosecutrix to be below 17 years and statement of prosecutrix recorded under Section 161 & 164 of CrPC, I do not find it to be a fit case where applicant should be enlarged on regular bail.
10. Accordingly, bail application is rejected.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-