

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MCRC No. 8261 of 2021

Aamir Khan S/o Yusuf Khan Aged About 32 Years R/o Atal Awas Vill
Kalipur District Bastar Chhattisgarh., District : Bastar(Jagdalpur),
Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through Police Station Jagdalpur District Bastar
Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh

---- Respondent

For Applicant : Shri Vikash Shrivastava, Advocate
For Non-applicant : Ms. Shubha Shrivastava, Panel Lawyer

S.B.: Hon'ble Shri Parth Prateem Sahu, Judge

Order On Board

10/12/2021

1. Applicant has filed this application under Section 439 of Cr.P.C. for grant of regular bail as he has been arrested in connection with Crime No.222/2021 registered at Police Station- Jagdalpur, District- Bastar (C.G.) for the offence punishable under Section 376 of IPC.
2. Case of prosecution is that applicant and prosecutrix are neighbours. They were having friendly relationship since last six years. On 14.7.2021, applicant called prosecutrix at Punam Hotel, Jagdalpur and proposed her to marry and thereafter both of them went to Geedam and resided in the house of Ibrahim, friend of

applicant till 20.7.2021 where applicant committed sexual intercourse with her against her will. On 17.7.2021, prosecutrix talked with her mother on mobile phone and stated that she is at Geedam. On 17.7.2021, they came back to Jagdalpur and resided in a rented accommodation till 21.7.2021 (Punjab Guest House). When prosecutrix asked applicant to marry, applicant stated her that he will perform *Nikah* and not Court marriage to which prosecutrix refused and thereafter report was lodged.

3. Shri Vikash Shrivastava, learned counsel for the applicant would submit that prosecutrix was a major girl on the date of alleged incident. She with her own will joined the company of applicant, resided along with him initially in the house of Ibrahim and thereafter in a rented accommodation from 17.7.2021 to 21.7.2021 at Jagdalpur. The allegation of physical relationship, if any, would be consensual as appearing from the report/contents of FIR itself as well as statement recorded under Section 164 Cr.P.C. Hence, applicant may be enlarged on bail.
4. Ms. Subha Shrivastava, learned counsel for the State opposes the submission of learned counsel for the applicant. She read over the contents of FIR as well as contents of statement of prosecutrix recorded under Section 164 of Cr.P.C. in support of her contention. However on asking, she submits that no document is available in case diary showing the date of birth of prosecutrix, but in FIR, year of birth is mentioned as 2001. Hence, applicant is not entitled to grant of bail.

5. I have heard learned counsel for the parties.
6. Taking into consideration the facts and circumstances of the case, nature of allegations, the fact that on the date of incident, prosecutrix was aged about 20 years, considering the statement recorded under Section 164 of Cr.P.C. of the prosecutrix, without commenting anything on merits, I am inclined to allow the bail application.
7. Accordingly, the bail application is allowed. It is directed that the applicant shall be released on regular bail, upon his furnishing a bail bond in the sum of Rs.25,000/- with one 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) 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