

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 9162 of 2020

1. Subhash Yadav S/o Nandlal Yadav, Aged About 27 Years, Resident of Vrinda Nagar Bhilai, Tehsil and District Durg Chhattisgarh., District : Durg, Chhattisgarh
2. Somnath Yadav S/o Nandlal Yadav Aged About 19 Years, Resident of Vrinda Nagar Bhilai, Tehsil and District Durg Chhattisgarh., District : Durg, Chhattisgarh

---- Applicants

Versus

- State of Chhattisgarh, Through District Magistrate, Durg, District Durg Chhattisgarh., District : Durg, Chhattisgarh

----Non-applicant

For Applicants – Shri B.P. Singh, Advocate.

For State/Non-applicant – Shri Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

22-03-2021

Heard.

The State counsel makes this submission that according to the report received from jail authorities, applicant No.1 has been medically examined and he is not suffering from any physical disability at present.

The applicants' counsel is placing reliance on the disability of the applicant No.1 which was of temporary nature and that had occurred in the year 2009.

Learned counsel for the applicants wants to make submission on merits.

1. Heard on the application filed under Section 439 of the Cr.P.C. This is first bail application before this Court filed by the applicants for grant of regular bail. The applicants have been arrested on 15-10-2020 in connection with Crime No.273/2020 registered at Police Station – Vaishalinagar, District Durg, Chhattisgarh for the offence under Section 377, 34 of the IPC and Section 4, 5(G), 6 of POCSO Act.

2. It is submitted by learned counsel for the applicants that both the applicants have been falsely implicated in this case. There is history of previous enmity of the family of the applicants and the complainant . According to the FIR lodged the incident has occurred on 13-10-2020, whereas, the FIR has been lodged on 14-10-2020. The victim was examined on 14-10-2020 and the doctor did not find any swelling, redness or abrasion on the anus of the victim. The victim was again medically examined on 18-10-2020 and the result was the same. Therefore, it is a false case against these applicants.

It is further submitted that according to the medical jurisprudence in case of any carnal intercourse, symptoms of redness, swelling, abrasion etc. are necessarily found on the anus of the victim, which is not at all found in this case whereas the victim was examined twice by the medical person.

Reliance has been placed on the judgment of Madhya Pradesh High Court passed in MCRC No.7292/2014 (Ankit Sen Vs. State of M.P.) decided on 22-09-2014.

On behalf of the applicants reliance has also been placed on the order of the High Court of Kerala at Ernakulam in Bail Application No.3799 of 2008 (Riju Residing At Riju Mandiram Vs. State of Keral) decided on 20-06-2008 in which the applicant was granted bail in similar offences on this ground that no injuries were found on the anus of the victim in the medical examination.

Reliance has also been placed on the judgment of Allahabad High Court in the matter of Mirro Vs. Emperor, A.I.R. (34) 1947 Allahabad 97 in which accused was acquitted on the ground that no medical evidence present regarding carnal intercourse with the victim.

Therefore, it is prayed that these applicants be granted bail.

3. Learned counsel for the State/non-applicant opposes the application and submits that the victim is a 6 years old boy, who has given very clear

statement under Section 161 and 164 of the Cr.P.C. alleging commission of offence under Section 377 of the IPC by both these applicants. The FIR was lodged by the mother of the victim and it was the mother of the victim who had noticed redness and swelling in the anus of the victim, although the same could not be noticed by the examining doctor. Looking to the presence of such evidence present the applicants are not entitled for grant of bail.

4. Heard learned counsel for the parties and perused the case diary.

5. According to the prosecution case, on 13-10-2020 at about 4:00 p.m. both the applicants called the victim aged about 6 years old boy to their place, where firstly applicant No.2 committed carnal intercourse with the victim by inserting his penis and then applicant No.1 did the same act. The mother of the victim noticed swelling and injury on the anus of the victim on the same day. However, the incident was disclosed to her by the victim on the next day. Thereafter, the FIR has been lodged.

6. Considered on the submissions. Looking to this fact that there is direct statement of the victim and also of his mother about noticing the swelling in the anus of the victim, although the medical report is negative on this point, but in case of any anomaly, it is the statement of the victim which has to be given preference. Hence, at this stage, on the basis of this evidence present it can be said that the offence as alleged is made out against these applicants. The offence is of grave nature and the victim is only 6 years old boy, therefore, I do not feel inclined to allow this application.

7. Consequently, this application filed by the applicants under Section 439 of the Cr.P.C. for grant of regular bail is hereby rejected.

Sd/-
(Rajendra Chandra Singh Samant)
Judge