

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 18 of 2021**

Parsottam Todar, S/o Ganguram Todar, Aged About 20 Years, R/o Village Dhaneli, Police Station Mujgahan, Raipur, Tehsil and District Raipur Chhattisgarh.

---- Applicant**Versus**

State of Chhattisgarh Through Station House Officer, Police Station Aarang, District Raipur Chhattisgarh.

---- Non-applicant

 For Applicant : Shri Awadh Tripathi, Advocate
 For Non-applicant/State : Shri Shrikant Kaushik, P.L.

(Proceedings through Video Conferencing)**Hon'ble Shri Justice Parth Prateem Sahu****Order on Board****09.07.2021**

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 28.10.2020 in connection with Crime No.416 of 2020 registered at Police Station Aarang, District Raipur, C.G. for commission of the offence punishable under Sections 363, 366, 376 of Indian Penal Code ('IPC') and Section 4 of the Protection of Children from Sexual Offences Act, 2012 ('POSCO Act').
2. Case of the prosecution is that, on 16.09.2020, at about 11.00 AM, when prosecutrix was going to her school, applicant came on motorcycle and stated that he will marry her and took her on his motorcycle to the house of his sister

at Santoshi Nagar, Raipur where they stayed for one day. In the night, applicant came to the room where the prosecutrix was sleeping and committed forceful intercourse with her. Initially, report was lodged by father of prosecutrix, based upon which, crime under Section 363 of the IPC was registered. After recovery of prosecutrix and recording her statement, instant crime has been registered against the present applicant for the offences mentioned therein.

3. Shri Awadh Tripathi, learned counsel for the applicant submits that applicant has been implicated in false and fabricated case. He further submits that statement of prosecutrix is recorded under Section 164 of Cr.P.C. wherein she has not levelled any allegation against the present applicant; attracting the provisions of Section 4 of the POSCO Act or under Section 376 of IPC. It is contended that prosecutrix has given statement under Section 161 of Cr.P.C. to the Police only under the pressure of her parents. Applicant is in jail since 28.10.2020, hence, he may be enlarged on regular bail.
4. Shri Shrikant Kaushik, learned Panel Lawyer representing the State while opposing the submissions made by learned counsel for the applicant submits that specific allegation has been levelled against the applicant of commission of forceful intercourse with the prosecutrix in the house of his sister,

however, he does not dispute the submission with regard to statement recorded under Section 164 of Cr.P.C.

5. Prosecutrix is present in person through District Legal Services Authority, Raipur. She submits that applicant has committed forceful intercourse with her. She further submits that she had been given threat to assault her parents, she gave statement under Section 164 of Cr.P.C. under threat.
6. At this stage, Shri Tripathi, learned counsel for the applicant submits that for the purpose of considering application under Section 439 of Cr.P.C., material available in charge-sheet is only to be looked into and statement of prosecutrix appearing under notice as provided under Section 439(1)(a) of Cr.P.C. is not to be considered. He placed reliance on the verdict passed by Hon'ble Supreme Court in **Dr. Dhruvaram Murlidhar Sonar v. State of Maharashtra and Others** reported in **(2019) 18 SCC 191**, in which, Hon'ble Supreme Court has quashed the First Information Report and charge-sheet, in which, offences under Section 376(2)(b), 420, 34 of IPC and Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 were registered against the accused therein holding that if sexual relationship with accused is made without pressure or misconception on the part of accused offence would not be made out. He further relied upon the order passed in **M.Cr.C.**

No.8504 of 2020 (*Vaibhav Ambast v. State of Chhattisgarh*)

vide order dated **01.02.2021** in support of his contention.

7. I have heard learned counsel for the parties.
8. As submitted by learned counsel for the State that there is statement recorded under Section 161 of Cr.P.C. wherein prosecutrix has levelled specific allegation with regard to making physical relationship with her and on the said date, prosecutrix was below the 18 years of age.
9. So far as the submission made by learned counsel for the applicant that in statement recorded under Section 164 of Cr.P.C., she had not made any allegation with regard to making physical relationship, is not acceptable in view of statement given by prosecutrix before this Court that said statement was given by her under threat and pressure. Statement under Section 164 of Cr.P.C. cannot be read as an evidence in trial. The case law relied upon by learned counsel for the applicant is not applicable to the facts of the case because in case of **Dr. Dhruvaram Murlidhar Sonar** (supra), the prosecutrix was a major widow lady and her allegation was that Dr. Dhurvaram has made physical relationship with her on the pretext of marriage, hence, applicant would not get any benefit from the aforementioned ruling of Hon'ble Supreme Court.

10. Taking into consideration the nature of allegations, material available in the case diary, age of the prosecutrix on the date of incident and statement made by her before this Court, I am not inclined to enlarge the present applicant on bail. Accordingly, bail application is dismissed.

Sd/-

(Parth Prateem Sahu)
Judge