

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 276 of 2021**

- Bhameshwar Sahu S/o Chatur Das Aged About 21 Years R/o Village Khamhardih, P. S. And Tehsil Khairagarh, District Rajnandgaon Chhattisgarh

---- Applicant**Versus**

- State Of Chhattisgarh Through District Magistrate, Rajnandgaon Chhattisgarh

---- Respondent

For Applicant	:	Shri Rakesh Pandey, Advocate
For State	:	Shri Lalit Jangde, Dy.G.A.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****11/06/2021**

Heard.

1. The applicant has been arrested in connection with Crime No.246/2020 registered at Police Station – Khairagarh, District – Rajnandgaon (C.G.) for alleged commission of offences under Section 354-B, 451 of IPC and Section 3 and 4 of POCSO Act.
2. This is 2nd repeat application. Earlier application was rejected on 19/10/2020 though with liberty to revive after two months. This application was filed after two months and has come up for hearing today.
3. Learned counsel for the applicant would submit that the entire allegation as contained in the FIR and the statement of the prosecutrix, even if taken as it is, does not fall within the scope and ambit of Section 354 IPC and since there is no specific allegation of assault and criminal force used with intention to disrobe or compel her to be naked, Section 354-B IPC would not apply in the present case. In the absence of there being material of penetrative sexual assault, Section 3 and 4 of POCSO Act will not apply. Therefore, at this stage, it is submitted that the applicant may be granted bail as he is in jail since 11/07/2020 and maximum sentence provided under Section

354 IPC is five years and minimum sentence is one year and the applicant has completed almost 11 months of detention by now.

4. On the other hand, learned State counsel opposes prayer and submits that earlier, bail application of the applicant was rejected by this Court taking into consideration the nature and gravity of allegations and criminal overt act. It is submitted that the manner in which the applicant pounced upon the prosecutrix in her kitchen and outraged her modesty, indicates that all this was done with intention to disrobe and compel her to be naked. Therefore, a case under Section 354-B IPC is *prima facie* made out.

5. Taking into consideration the submission of learned counsel for the parties, particularly taking into consideration that the applicant is in pre-trial detention for the last about 11 months and further taking into consideration the submission of learned counsel for the applicant that the prosecutrix has not specifically stated anywhere that whatever was done, was with intention to disrobe or compel to be naked, without commenting upon the merits of the case, at this stage, because the trial has not been concluded till date and also taking into consideration that the applicant has an arguable case with regard to applicability of Section 354 -B IPC and Section 3 and 4 of the POCSO Act and according to him, maximum sentence which could be awarded is five years under Section 354 of IPC, I am inclined to grant bail to the applicant.

6. Accordingly, the application is allowed. It is directed that the applicant shall be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- along with two local sureties for the like amount to the satisfaction of the Trial Court on the condition that -

- a) He shall appear before the Trial Court regularly on each and every date, unless exempted from appearance.
- b) He shall not make any attempt to tamper with the prosecution witnesses.

Certified copy as per rules.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge