CGHC010312652026 2026:CGHC:44039

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MCRC No. 7439 of 2026

Dipak Kashyap S/o- Shibo Ram Kashyap, Aged About 23 Years R/o- Village Bhaisgaon Chowki Ghotiya, Police Station-Lohandiguda, District- Bastar (C.G.) --- **Applicant**

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Date: 2026.10.14 17:41:38 +0530

versus

State Of Chhattisgarh Through Police Station-Lohandiguda, District- Bastar (C.G.) --- **Non-Applicant**

For Applicant	:	Shri Gajendra Prakash Sahu, Advocate.
For Non-applicant/State	:	Ms. Smriti Shrivastava, P.L.

(HON'BLE SHRI JUSTICE RAKESH MOHAN PANDEY)

Order on Board

12/10/2026

1. The applicant has preferred the **First bail application** under Section 483 of the BNSS, 2023 for grant of regular bail, as he has been arrested in connection with Crime No.21/2026, registered at Police Station Lohandiguda, District Bastar (C.G.) for the offence punishable under Sections 64(1), 64(2)(m) of Bhartiya Nyay Sanhita, 2023 (for short, the BNS) and 4, 6 of the Protection of Children from Sexual Offences Act, 2012 (in short, the POCSO Act, 2012).

2. Case of the prosecution, in nutshell, is that the applicant enticed the victim, who is said to be under 16 years, on the date of incident, and took her away to Narangi River and then Chhindgaon, under the false pretext of marriage and thereafter, the applicant repeatedly subjected the minor victim to forcible sexual intercourse between 20.10.2025 and

25.01.2026 and subsequently, the victim conceived. Based on these allegations, the aforesaid offence was registered against the present applicant.

3. Learned counsel appearing for the applicant would contend that the victim was medically examined by the Doctor, whose report says that there is no definite sign of any recent sexual assault; the victim has already been examined; charge-sheet has already been filed way back in the month of May, 2026, but there is no substantive progress in the trial. He would further contend that the applicant is in jail since 28.03.2026; he has no criminal antecedents and conclusion of trial may take some considerable time. He would, therefore, pray for grant of bail to the applicant.

4. On the other hand, learned State counsel would oppose the bail application and submit that on the date of incident, i.e., 20.10.2025, the age of the victim was 15 years and 7 months and she has made serious allegations of sexual assault against the present applicant in her statement recorded under Section 183 of BNSS and the deposition recorded before the trial Court, therefore, the bail application of the present applicant deserves to be rejected.

5. I have heard the learned counsel for the parties and perused the case diary.

6. Victim appeared along with her mother through virtual mode and has raised serious objection in grant of bail to the applicant.

7. In this case, the victim’s age was 15 years and 7 months on the date of incident. It appears that applicant and the victim, who is under 16 years, came into contact and the applicant, on the false pretext of marriage subjected the minor victim to forcible sexual intercourse between 20.10.2025 to 25.01.2026 and subsequently, she conceived. Moreover, the victim, in her deposition before the learned trial Court supported the case of the prosecution and also the victim and her mother appeared through virtual mode and has raised serious objection in releasing the applicant on bail.

8. Be that as it may, this Court cannot lose sight of the fact that on the date of the incident, the prosecutrix was admittedly under 16 years and was, therefore, a minor in terms of Section 2(1)(d) of the POCSO Act. It is a well-settled principle of law that the consent of a minor is non est and holds no legal validity whatsoever. Even assuming there was consent on the part of the victim, such consent cannot cure the statutory illegality or extinguish the prima facie commission of the afore-stated offence.

9. Having considered the fact that age of the victim was 15 years and 7 months on the date of incident and is not competent to give her consent; she has made serious allegations of repeated sexual assault against the present applicant and looking to the deposition of the victim before the learned trial Court supporting the case of the prosecution, I am not inclined to allow the instant bail application. Accordingly, the first bail application is liable to be and is hereby **rejected.**

Sd/-

(Rakesh Mohan Pandey)
JUDGE

Anjani