

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 1649 of 2023

Pritam Vasudev S/o Rajendra Vasudev Aged About 20 Years R/o Village Chourenga, P.S. Simga, District : Balodabazar-Bhathapara, Chhattisgarh

----Applicant

Versus

State Of Chhattisgarh Through Police Station Simga, District : Balodabazar-Bhathapara, Chhattisgarh

----Non-applicant

For Applicant	Shri A.S. Rajput, Advocate.
For State	Shri Gagan Tiwari, Dy. G.A.

Hon'ble Shri Justice Sachin Singh Rajput
Order on Board

28/04/2023

1. This is the Second Bail Application filed under Section 439 of Code of Criminal Procedure.
2. First bail application was dismissed as withdrawn with liberty to revive after examination of the material witnesses vide order dated 10/01/2023 in MCRC No.7987 of 2022.
3. Applicant is arrested in connection with Crime No.331/2022 registered at Police Station Simga, District Balodabazar-Bhatapara (C.G.) for the offence under Sections 363, 366, 376, 506 of IPC and Sections 4 & 6 of POCSO Act.
4. The brief facts of the case is that applicant abducted the prosecutrix and took her to village Damapur with a promise of marriage and committed sexual intercourse with her and threaten for dire consequences.
5. Learned counsel for the applicant submits that it is purely a case of the consent and from the evidence of the prosecutrix it is established on record that there was no forcible intercourse committed by the applicant rather relationship if any was consensus in nature. He further submits that the age of the prosecutrix was more than 18 years, which is reflected from the statement of Headmaster examined before the learned trial Court and according to the school register the date of birth of the victim was 29/08/2003 whereas the incident is alleged to have occurred on 03/04/2022 meaning thereby the victim was more than 18 years of age on the date of alleged commission of crime. He also submits that in fact

there was love affair between the applicant and the prosecutrix as the age difference between them is hardly 1 – 2 years but when the parents claim to know about this, a false report was lodged against him. He further submits that trial is likely to take some time, applicant is in jail since 10/07/2022 and he is ready and willing to abide by any of the conditions which may be imposed by this Court while granting bail. With regard to age of the prosecutrix, he places reliance upon the judgment of Hon'ble Supreme Court in the case of **Janrail Singh vs. State of Haryana** reported in **(2013) 7 SCC 263** and also submits that according to Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 firstly the age of the child has to be determined on the basis of date of birth certificate from the school or matriculation or equivalent certificate issued from the concerned examination Board if available and in the absence thereof the birth certificate given by the Corporation or Municipal authority or Panchayat and only when the first two are not available, the age shall be determined by the ossification test or other latest medical age determination test conducted on the orders of the Committee of the Board, therefore, *prima facie* there is an evidence available on record i.e. school register which goes to show that on the date of incident prosecutrix was more than 18 years of age.

6. Opposing the bail, learned State counsel submits that though the school register contains the date of birth as 29/08/2003 but the ossification test has been conducted in which the age of the prosecutrix appears to be between 14 to 16 years and the school register has been disputed by the parents of the victim. Therefore, on the basis of evidence so collected the application may be rejected.
7. Heard learned counsel for the parties, considered their rival submissions.
8. Looking to the facts and circumstances of the case, nature of allegations, considering the evidence collected and detention period of the applicant, trial is likely to take some time and submission made at the Bar by the learned counsel for the parties, without commenting anything on merits at this stage I am inclined to allow the bail application of the applicant. Accordingly, the bail application is **allowed**. It is directed that in the event of applicant executing a personal bond for a sum of **Rs. 25,000/-** with one surety to the satisfaction of the concerned Trial Court, he shall be released on bail on the following conditions:-

- (i) he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such fact to the Court
- (ii) he shall not act in any manner which will be prejudicial to fair and expeditious trial, and
- (iii) he shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.
- (iv) he shall not involve himself in any offence of similar nature in future.
- (v) he is restrained from meeting any of the prosecution witnesses till the conclusion of the trial.

9. It is made clear that these observations are only for the purposes of deciding the bail application. The trial Court will decide the case on its own merits without being influenced by any observation made herein-above.

10. The applicant shall not influence any of the witnesses acquainted with the facts of the case in any manner whatsoever, and that if anything like this comes to the notice of the Court below, it may cancel the bail granted to him.

Sd/-

Sachin Singh Rajput
Judge

Kamde